Montana Code Annotated

ANNOTATIONS

2024

Credit Transactions & Relationships • Financial Institutions
Insurance & Insurance Companies • Corporations,
Partnerships & Associations • Professions & Occupations

VOLUME 7

2024
ANNOTATIONS
to the
MONTANA CODE ANNOTATED

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2024 ANNOTATIONS to the MONTANA CODE ANNOTATED

CONTENTS

Volume 1

Table of Session Law to Code — 2023
Table of 2022 Ballot Issues to Code
Official Report of the Montana Code Commissioner — 2023
Enabling Act
Constitution of Montana
Title
1. General Laws and Definitions

Volume 2

Titles
2. Government Structure and Administration
3. Judiciary, Courts
4. Reserved
5. Legislative Branch
6. Reserved
7. Local Government
8 and 9. Reserved
10. Military Affairs and Disaster and Emergency Services
11 and 12. Reserved
13. Elections
14. Reserved

Volume 3

Titles
15. Taxation
16. Alcohol, Tobacco, and Marijuana
17. State Finance
18. Public Contracts
19. Public Retirement Systems
20. Education
21. Reserved
22. Libraries, Arts, and Antiquities

Volume 4

Titles
23. Parks, Recreation, Sports, and Gambling
24. Reserved
25. Civil Procedure

Volume 5

Titles
26. Evidence
27. Civil Liability, Remedies, and Limitations

Volume 6

Titles
28. Contracts and Other Obligations
29. Reserved
30. Trade and Commerce

Volume 7

Titles
31. Credit Transactions and Relationships
32. Financial Institutions
33. Insurance and Insurance Companies
34. Reserved
35. Corporations, Partnerships, and Associations
36. Reserved
37. Professions and Occupations
38. Reserved

Volume 8

Titles
39. Labor
40. Family Law
41. Minors
42. Adoption
43. Reserved

Volume 9

Titles
44. Law Enforcement
45. Crimes

Volume 10

Titles
46. Criminal Procedure
47. Access to Legal Services
48. Reserved

Volume 11

Titles
49. Human Rights
50. Health and Safety
51. Reserved
52. Family Services
53. Social Services and Institutions
54-59. Reserved
60. Highways and Transportation
61. Motor Vehicles
62-66. Reserved
67. Aeronautics
68. Reserved
69. Public Utilities and Carriers

Volume 12

Titles
70. Property
71. Mortgages, Pledges, and Liens
72. Estates, Trusts, and Fiduciary Relationships
73 and 74. Reserved
75. Environmental Protection

Volume 13

Titles
76. Land Resources and Use
77. State Lands
78 and 79. Reserved
80. Agriculture
81. Livestock
82. Minerals, Oil, and Gas
83 and 84. Reserved
85. Water Use
86. Reserved
87. Fish and Wildlife
88 and 89. Reserved
90. Planning, Research, and Development
91-99. Reserved

PREFACE TO VOLUME 7
(Annotations — September 2024)

Annotations to this volume include:

Case notes of applicable court decisions through:
- public domain citation 2023 MT 177
- volume 413 Montana Reports page 356
- volume 535 Pacific Reporter (3rd Series) page 1133

Digests of Montana Attorney General's opinions through:
- volume 59 opinion number 1 of the Report and Official Opinions of Attorney General

Amendment notes listed under compiler's comments are intended to explain only amendments made in the year indicated and may not accurately reflect current statutory language because of subsequent amendment.

The annotations are provided as a convenience to the user and are not intended to be an exhaustive compilation of the law under a given statute or in a given area.

TITLE 31
CREDIT TRANSACTIONS AND RELATIONSHIPS

Title Case Notes

IRS Form 1099-C — Not Discharge of Debt — Creditor Still Able to Collect: The Supreme Court adopted the majority position regarding the purpose of the Form 1099-C and held that the issuance of an IRS Form 1099-C is not prima facie evidence of a creditor's intent to discharge a debt; rather, it is a means of satisfying the agency's reporting requirements and does not, in and of itself, prevent a creditor from seeking collection of a debt. Flathead Bank of Bigfork v. Masonry by Muller, Inc., 2016 MT 269, 385 Mont. 214, 383 P.3d 215.

Title Law Review Articles

Pay Attention! Marginalized Communities, the Consumer Financial Protection Bureau, and Regulatory Advocacy, Thompson, 82 Mont. L. Rev. 343 (2021).

Morrow v. Bank of America, Further Developments in Consumer Law in Montana, and Their Impact on Consumers in the Age of COVID-19, Wilson & McCulloch, 82 Mont. L. Rev. 193 (2021).

Bad Apples or a Rotten Tree: Ameliorating the Double Pandemic of COVID-19 and Racial Economic Inequality, Martin, 82 Mont. L. Rev. 105 (2021).

Is the CFPB Still on the Beat? The CFPB's (Non)Response to the COVID-19 Pandemic, Cowie, 82 Mont. L. Rev. 41 (2021).

Big Interest Rates Under the Big Sky: The Case for Payday and Title Lending Reform in Montana, Lundberg, 68 Mont. L. Rev. 181 (2007).

CHAPTER 1
CREDIT TRANSACTIONS

Part 1
Loans of Money — Interest Rates

Part Law Review Articles

Pay Attention! Marginalized Communities, the Consumer Financial Protection Bureau, and Regulatory Advocacy, Thompson, 82 Mont. L. Rev. 343 (2021).

Morrow v. Bank of America, Further Developments in Consumer Law in Montana, and Their Impact on Consumers in the Age of COVID-19, Wilson & McCulloch, 82 Mont. L. Rev. 193 (2021).

Is the CFPB Still on the Beat? The CFPB's (Non)Response to the COVID-19 Pandemic, Cowie, 82 Mont. L. Rev. 41 (2021).

Montana Legislature Summary, 1959 (Consumer Loan Act), 20 Mont. L. Rev. 135 (1959).

31-1-101. Loan of money — what constitutes.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Agreement for Payment of Costs of Subdivision Telephone Facilities Containing Contingent Service Refund Not Considered Loan Requiring Payment of Interest — Judgment on Pleadings Affirmed: In 2001, defendant telephone cooperative entered an aid to construction contract whereby plaintiff agreed to pay $85,497.88 to aid defendant in costs incurred in installing, operating, and maintaining telephone facilities for services to plaintiff's subdivision. The contract required defendant to refund all or part of the money following construction if the actual cost per unit was less than estimated and the unit maintained continuous service for 5 years. In 2004, plaintiff demanded that defendant pay interest on the money, asserting that the money was a loan. The District Court held that the money was not a loan, so plaintiff was not entitled to interest. The District Court granted judgment on the pleadings for defendant pursuant to former Rule 12(c), M.R.Civ.P. (now superseded). On appeal, the Supreme Court affirmed. The District Court properly considered all materials and exhibits referred to in the pleading, and the court did not have to accept the allegation that the money was a loan for purposes of granting judgment because the question was not a factual allegation, but rather a question of law. Defendant's obligation to return money was based on a contingency, and there was no absolute promise to repay, so the transaction did not meet the definition of a loan. Thus, judgment on the pleadings was proper. Firelight Meadows, LLC v. 3 Rivers Tel. Co-op, Inc., 2008 MT 202, 344 M 117, 186 P3d 869 (2008), following Rae v. Cameron, 112 M 159, 114 P2d 1060 (1941). See also Nyquist v. Nyquist, 255 M 149, 841 P2d 515 (1992).

Sale With Option to Repurchase Not Considered Loan — Factors Not Met: Dillree initially requested a loan from Devoe, but Devoe stated he did not make loans and the request was denied. Dillree then suggested he could sell Devoe certain property with an option to repurchase within 6 months. Two such transactions occurred, but the obligations were not timely repaid and Devoe demanded surrender of the property. District Court awarded the property to Devoe, but on appeal Dillree contended the transactions were not sales, pointing out the four factors listed in Murray v. Butte-Monitor Tunnel Mining Co., 41 M 449, 110 P 497 (1910), which tend to confirm that a transaction is a security arrangement or mortgage and not a sale. The factors are: (1) the transaction in its inception had for its purpose a loan, not a sale; (2) the grantor was in financial distress at the time of the transaction; (3) the price appears to have been grossly inadequate; and (4) according to the grantee's own theory, the transaction did not amount to an absolute sale but to a conditional sale. The Supreme Court affirmed the trial court's findings that factors (1) and (3) were not present and that therefore the transactions could not be considered loans but were contracts for sale of property with the opportunity for repurchase. Dillree v. Devoe, 223 M 47, 724 P2d 171, 43 St. Rep. 1521 (1986). See also Campbell v. Campbell, 223 M 124, 725 P2d 207, 43 St. Rep. 1584 (1986).

Transaction Based on Contingency: A loan of money is a temporary letting for a temporary use, the term implying an obligation to repay. If such obligation is based on a contingency or a condition, the transaction is not a loan. One of several joint adventurers agreed to furnish the money for testing land for deposits of placer gold, he to be repaid if the venture should prove successful. The transaction did not constitute a loan, as contended in an action to recover wage claims, but rather was an investment. Rae v. Cameron, 112 M 159, 114 P2d 1060 (1941), followed in Nyquist v. Nyquist, 255 M 149, 841 P2d 515, 49 St. Rep. 927 (1992).

31-1-103. Loan presumed to be on interest.

Case Notes

Accounting of Guardian: A guardian, without an order of the court, loaned the funds of his ward on an interest-bearing note. At the final accounting of the guardian, the ward refused to accept the note. In his final report the guardian treated the total sum of the note as cash, charged himself with that amount as included in the total receipts, and made no mention of the note or the interest. The guardian was properly directed to account for the interest due on the note at the date of final settlement, even though the ward refused to accept the note in lieu of cash. In re Allard Guardianship, 49 M 219, 141 P 661 (1914).

Law Review Articles

Interest-Free Loans Are No Longer Free: Tax Consequences of Gift Loans, Willbanks, 47 Mont. L. Rev. 39 (1986).

31-1-104. Interest defined.

Compiler's Comments

2005 Amendment: Chapter 125 at end inserted "and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2". Amendment effective March 24, 2005.

Retroactive Applicability — Applicability: Section 5, Ch. 125, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, L. 1985."

Section 8, Ch. 272, L. 2005, amended sec. 5, Ch. 125, L. 2005, to provide: "(1) Except as provided in subsection (2), [~~This~~ this act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, Laws of 1985.

(2) [This act] does not apply to loans that are the subject of a lawsuit filed prior to [the effective date of this act]." Chapter 125 effective March 24, 2005. Chapter 272 effective April 19, 2005.

Case Notes

No Duty of Insurer to Cover City's Conversion of Pension Funds: The city of Dillon failed to properly pay pension benefits, even though the city received the money from the state. When a beneficiary sued the city to recover unpaid benefits, the city tendered defense of its claim to its insurer, but the insurer declined to provide coverage or defend the claim based on a financial gain exclusion in the insurance policy. The beneficiary was granted summary judgment, so the city paid the judgment and filed an action to recover against the insurer. The District Court held that the insurer was liable and breached its duty to defend, so the insurer appealed. The Supreme Court held that the insurer had no duty to provide coverage to the city because the city's claim arose in whole or in part from the city's unlawful retention and conversion of the pension funds, so the city had no coverage for the claims for return of principal and interest. The District Court was reversed. Dillon v. Mont. Municipal Ins. Authority, 2009 MT 393, 353 M 370, 220 P3d 623 (2009).

Points Charged as Flat Fee on Loans Not Considered Interest — Charging Unauthorized Fees Violative of Consumer Loan Act: A lender charged a loan fee, called points, upon the origination of real estate-secured loans. The lender contended that the points were considered interest on the loan and were thus permissible under the Montana Consumer Loan Act (CLA). The Supreme Court disagreed. Interest is generally defined as a charge made for the use, forbearance, or detention of money. A flat fee front-loaded into a loan, computed as a percentage of the loan but bearing no direct relation to actual costs of specific services performed and which did not constitute a charge for use of the lender's money over time, is not interest, but rather is a fee charged by the lender for making the loan. Such fees are not authorized by the CLA and are thus prohibited. To protect borrowers, the court declined to interpret the CLA in a way that contains a loophole whereby predatory lenders could add points onto the beginning of an interest-bearing loan and thereby escape the requirement that the points be at least partially refunded if the loan is prepaid or refinanced. (See 2005 amendment.) Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 M 290, 104 P3d 1080 (2004).

Applicability of Usury to Postdefault Interest: Montana usury statutes apply to detentions of money as well as loans and forebearances. The statutory definition of interest in this section includes postdefault interest. Therefore, the District Court correctly applied the usury penalty in a case in which a lender sought to charge 18% interest in the event of default on a loan. Scarr v. Boyer, 250 M 248, 818 P2d 381, 48 St. Rep. 910 (1991).

Retail Installment Sales: The finance charges provided for in the Montana Retail Installment Sales Act are not compensation for the forbearance of money within the statutory definition of interest in this section. At the time of purchase, the debt created is a time obligation and is not then due because of the express provisions of the revolving charge account agreement which allows the customer to pay for the purchases in installments over a period of time. The "time price" doctrine applies to revolving charge account sales even though they are governed by the terms of one price agreement covering all future purchases from time to time rather than a series of identical individual agreements entered into at the time of each individual sale. Cecil v. Allied Stores Corp., 162 M 491, 513 P2d 704 (1973).

Payments on Insurance: When, after maturity of endowment insurance contract, insured exercised option to permit the insurer to hold the proceeds to be payable on death and to pay monthly interest, the payment of such yearly amounts was interest and not an annuity. In re Harper's Estate, 124 M 52, 218 P2d 927 (1950).

Administrator's Use of Estate Funds: A special administrator permitted estate funds to remain in an open checking account for 9 years. The account was at a bank at which he owned all but 14% of the capital stock. He was nevertheless not chargeable with interest upon the theory that by mingling the funds with those of the bank and using them he unlawfully profited by their use. In re Williams' Estate, 55 M 63, 173 P 790 (1918).

Interest — Incident to Debt: Interest is merely an incident to a debt, to be paid from time to time or at the date when the principal falls due, in consideration of the forbearance extended to the debtor, and becomes a part of the debt, or a debt at all, only when it has been earned. Carlson v. Helena, 39 M 82, 102 P 39 (1909).

31-1-105. Annual rate.

Case Notes

No Time Expressed in Note: Where no time is expressed in a note, the note is calculated on an annual basis. An allegation that the interest is due on a note and an action for the interest is sufficient to apprise the defendant of the claim against him. Mercer v. Mercer, 120 M 132, 180 P2d 248 (1947).

31-1-106. Legal interest.

Compiler's Comments

2013 Amendment: Chapter 278 in (1) after "31-1-112" deleted "or 31-1-817"; and made minor changes in style. Amendment effective December 31, 2013.

2001 Amendment: Chapter 455 in (1) at end of exception clause inserted "31-1-817"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 23, Ch. 455, L. 2001, provided: "[This act] applies to title loan agreements entered into or renewed after January 1, 2002."

1985 Amendment: In (1) increased interest rate from 6% to 10%.

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981.)

1981 Amendment: Inserted "or 31-1-111 and 31-1-112" following "Uniform Commercial Code" near the beginning of (1).

Case Notes

Fair Debt Collection Practices Act — Claimant Not Required to Dispute Debt Within 30 Days — Debt Not Misrepresented: The plaintiff sued the defendants alleging violations of the Fair Debt Collection Practices Act (FDCPA). The lawsuit concerned the defendants' attempt to collect a dental bill, which the plaintiff did not dispute with the defendants within 30 days. The District Court granted summary judgment for the defendants, holding that the plaintiff did not dispute her debt within 30 days and this barred her FDCPA claims. The Supreme Court disagreed with the District Court's reasoning that the FDCPA requires a claimant to dispute the debt within 30 days. However, the Supreme Court found that the District Court's grant of summary judgment was appropriate because the defendants did not misrepresent the debt and were entitled to charge fees in the collection of the debt. Serrania v. LPH, Inc., 2015 MT 113, 379 Mont. 17, 347 P.3d 1237.

No Prejudgment Interest in Action Against State: The District Court held that 31-1-106 requires the state to pay prejudgment interest on any money collected by the Department of Public Health and Human Services in excess of federal Medicaid law. The Supreme Court reversed, concluding that 2-9-317 is unambiguous and allows no interest to be assessed against the state until 2 years after the date of entry of judgment. Blanton v. Dept. of Public Health and Human Services, 2011 MT 110, 360 Mont. 396, 255 P.3d 1229.

Premarital Agreement — Allocation of 40% Ownership Interest in Brokerage Service Company Upheld: A wife argued that the District Court erred in allocating a 40% ownership interest in a brokerage service company to her husband. The Supreme Court held that the transfer was enforceable under 30-18-106 even though the wife had provided $280,000, which was transferred to the husband's separate checking account without an acknowledgment before a notary public. The $280,000 was a loan from the wife that was repaid in full. The $20,000 used to purchase the initial interest was a gift since no repayment schedule was ever executed and no consideration was requested. In addition, under 28-3-206, uncertainty is to be resolved against the party who caused the uncertainty to exist. With respect to the loan, the Supreme Court remanded after applying 31-1-106 and holding that the wife's loan of $280,000 was not interest-free. In re Marriage of Weiss, 2010 MT 188, 357 Mont. 320, 239 P.3d 123. In Weiss v. Weiss, 2011 MT 240, 362 Mont. 157, 261 P.3d 1034, the Supreme Court concluded that the District Court correctly determined on remand that the $280,000 loan was paid off in full by the husband and that the District Court's calculation of simple interest on the loan was correct.

Simple Interest Payable Absent Agreement for Payment of Compound Interest: The District Court ordered one partner to pay simple interest on the amount owed to a partnership for the purchase of a partnership interest. The other partner contended that compound interest rather than simple interest should be paid because the amount owed was analogous to the debt on a loan that required payment of compound interest. The Supreme Court noted that under 31-1-109, parties may agree in writing to the payment of compound interest, but absent an agreement in writing, Montana law does not provide for compound interest, so the District Court did not err in requiring payment of simple interest on the deficit capital account. McCormick v. Brevig, 2007 MT 195, 338 M 370, 169 P3d 352 (2007).

Preamendment Interest at Six Percent — Postamendment Interest at Ten Percent: Where prejudgment interest was payable from June 1983 through December 1987, the rate was properly set at 6% through October 1, 1985, the date of amendment of this section, and 10% thereafter. Albers v. Bar ZF Ranch, Inc., 229 M 396, 747 P2d 1347, 44 St. Rep. 2081 (1987).

Prejudgment Interest Rate Applicable From Effective Date of Amendment: The amendment increasing the legal interest rate became effective October 1, 1985. The interest rate for periods prior to that date is 6% a year and 10% a year thereafter. Springer v. Opsahl, 229 M 10, 744 P2d 884, 44 St. Rep. 1738 (1987).

Interest Due on Commission Fees: On appeal of a judgment awarding commission fees as detailed in a signed note but specifically denying award of interest on the debt, the Supreme Court found that the criteria to be eligible for prejudgment interest were met, that under 27-1-312 the remedy for breach of an obligation to pay money is "the terms of the obligation with interest thereon", and that the appropriate interest to be charged was ascertainable under this statute. Byrne v. Terry, 228 M 387, 741 P2d 1341, 44 St. Rep. 1620 (1987).

Interest on Judgment Not Compound Interest: In its initial summary judgment order, the District Court awarded a real estate broker the commission due plus interest at 6% on that amount from date of breach to date of judgment, pursuant to 27-1-211. On a second summary judgment dismissing a counterclaim, the court found the broker entitled to judgment at 10% on the initial judgment. The Supreme Court found this award was not compound interest in violation of 25-9-205, but was interest on the judgment, a correct calculation of interest due. Ellingson Agency, Inc. v. Baltrusch, 228 M 360, 742 P2d 1009, 44 St. Rep. 1598 (1987).

No Prejudgment Interest on Payments Made by Buyer but Later Ruled Responsibility of Sellers: Sellers reassumed possession of their former business after buyer defaulted on the sales contract. A dispute between buyer and sellers over who was responsible for the payment of accounts payable incurred by buyer was eventually resolved by the District Court in favor of buyer. Buyer then claimed he was entitled to prejudgment interest on the payments he had made after default. He was not entitled to interest under 27-1-211 because the award to buyer was one of reimbursement, not damages, nor was buyer entitled to interest under 27-1-212 because the money paid by buyer after default does not represent a breach of any obligation on the part of sellers. The District Court properly held that 31-1-106 applied. Heine v. Seibert, 217 M 224, 703 P2d 865, 42 St. Rep. 1152 (1985).

Breach of Oral Contract — Interest Rate: Plaintiff agreed to remodel a prefab home for defendant. He also built a foundation, added a bedroom and deck, and built a double garage. Plaintiff completed the basement and sent a bill to defendant. The bill was paid. The remainder of the work was completed, but defendant refused to pay, contending the oral agreement between the parties contained a "cap" of $30,000. Plaintiff contended the agreement was on a cost-plus basis, the unpaid portion of which was $63,310. The District Court found for plaintiff and awarded the amount due with interest at 6% (prior to 1985 amendment to this section) from the completion date. Defendant contended the award of damages was unreasonable. The amount awarded was the amount owed on the contract, not damages for breach. The award merely compensated plaintiff for what he was owed. Pursuant to 27-1-211, plaintiff was entitled to interest from the date he was entitled to payment. That was the date the District Court determined the work was completed. Since the parties had not agreed on an interest rate, the District Court used the legal rate stated in 31-1-106. This was within the court's reasonable discretion. Frank L. Pirtz Constr., Inc. v. Hardin Town Pump, Inc., 214 M 131, 692 P2d 460, 41 St. Rep. 2366 (1984).

Interest and Expenses Allowable: Plaintiff entered a buy-sell to purchase defendants' ranch. One of his major considerations was gaining investment tax credits. Defendants refused to perform, and plaintiff filed a breach of contract action. The District Court found for plaintiff and awarded him prejudgment interest at 10% on his state and federal income tax obligation, the earnest money, and his capital expenditures on the ranch. On appeal, the Supreme Court held that interest on the earnest money was all that should be allowed as prejudgment interest under 27-1-211. Prejudgment interest should be 6% under 31-1-106 (prior to 1985 amendment). Interest should then be allowed on the judgment according to 27-1-211 at the amount of 10% under 25-9-205. The expenses that are allowable to a plaintiff are found in 25-10-201, and 25-10-101 outlines when costs are allowed. The cost of depositions not used during trial is not allowed. Various travel expenditures would not have been chargeable to defendants if the contract had been performed. The portion of capital expenditures allowed should be only the loss plaintiff suffered as a result of expenditures from the time of signing the buy-sell to the time of breach. Ehly v. Cady, 212 M 82, 687 P2d 687, 41 St. Rep. 1611 (1984).

No Default for Failure to Pay Interest on Royalty Payment — Mineral Lease Not Requiring Payment of Interest: Where the plaintiff lessors of mineral rights gave the defendant lessees notice of default for failure to make a rental payment and the lessees tendered a check for that payment, the District Court did not err in granting summary judgment for the defendants in a later action for default brought by the plaintiffs. Even assuming that payment of interest in the royalty was due under 31-1-106, the agreement of the parties did not require payment of interest. Failure to remit interest was not in default of that agreement. Moreover, the default notice failed to notify the defendants that interest was due, contrary to the default clause of the parties' agreement. Failure to pay the interest was therefore immaterial. Lewis v. St., 207 M 361, 675 P2d 107, 41 St. Rep. 9 (1984).

Interest for Judgment on Account Stated: Trial court was in error awarding 10% interest per annum on judgment (prior to 1985 amendment to this section). Big Sky Livestock v. Herzog, 171 M 409, 558 P2d 1107 (1976).

Judgment to Include Interest:

In an action for breach of contract, the buyer had made a down payment and, contrary to the court's instructions, the jury's verdict made no mention of recovery of the down payment. It was competent for the court to correct the verdict by including recovery of the advance payment with interest. Gilmore v. Mulvihill, 109 M 601, 98 P2d 335 (1940).

The court may add the interest to the judgment when there is no controversy on the facts giving rise to the right to interest. W. J. Lake & Co. v. Mont. Horse Prod. Co., 109 M 434, 97 P2d 590 (1939).

Demand for Payment:

When a debtor knows amount due and due date, no demand is necessary to start the running of interest from the date the payment should have been made. W. J. Lake & Co. v. Mont. Horse Prod. Co., 109 M 434, 97 P2d 590 (1939).

The holder of past due interest coupons bearing interest on county bonds is not required to first file a claim with the county for such interest, the amount of the demand being fixed by law. Kalman v. Treasure County, 84 M 285, 275 P 743 (1929).

Probate Proceedings: When an administrator, though ordered by the court to sell for cash, sold on credit and without security after unnecessary delay, he is chargeable with interest from the date money should have been received. In re Astibia's Estate, 100 M 224, 46 P2d 712 (1935).

Administering Estate: Interest is not allowable on the charges and expenses of administering an estate. In re Bielenberg's Estate, 98 M 546, 40 P2d 49 (1935).

Ascertained Amount Due:

When a mechanics' lien (now construction lien) claimant overstated the amount of his claim in the lien filed, so that it required the judgment of the court to foreclose the lien and to decide the correct amount due, interest—a creature of statute—was allowable only from the date of the decision. Eskestrand v. Wunder, 94 M 57, 20 P2d 622 (1933).

This section, insofar as it relates to accounts, applies when the amount due the creditor is determined—when a balance is ascertained. From such time a certain amount of money is due the creditor. Hefferlin v. Karlman, 29 M 139, 74 P 201 (1903).

Insolvency Proceedings: In an action by a creditor against the receiver of an insolvent bank, the creditor, on establishing his preferred claim, is entitled to interest thereon from the date of the closing of the bank. McDonald v. Am. Bank Co., 79 M 233, 255 P 733 (1927).

Unspecified Rate of Interest: A promissory note payable with interest without specifying the rate thereof carries interest at the legal rate. In the absence of fraud or mistake, a written contract supersedes all prior oral negotiations and agreements with relation thereto. Burnett v. Burnett, 68 M 546, 219 P 831 (1923).

Accounting of Executor: An executor retained in his hands funds of the estate which should have been deposited in a bank, drawing interest. The executor, in an equitable accounting, should not be required to pay arbitrary rates of interest upon such funds in excess of the statutory rate, particularly where he accounted for a higher rate than the banks would have paid. In re Ricker's Estate, 14 M 153, 35 P 960 (1894).

Law Review Articles

Recent Developments in Business Law, Morton & Barber, 39 Mont. L. Rev. 53 (1978).

31-1-107. Interest rate allowed by agreement.

Compiler's Comments

2011 Amendment: Chapter 108 in (1) after "above the prime rate" substituted "published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans" for "of major New York banks, as published in the Wall Street Journal edition"; and made minor changes in style. Amendment effective April 1, 2011.

Effective Date — Applicability: Section 4, Ch. 108, L. 2011, provided: "[This act] is effective on passage and approval [approved April 1, 2011] and applies to all interest rate agreements governed by 7-8-2304, 31-1-107, or 33-3-431 made on or after [the effective date of this act]." Effective April 1, 2011.

1993 Amendment: Chapter 588 in (1), near beginning after "interest", substituted "that does not exceed the greater of 15% or an amount that is" for "not more than"; and made minor changes in style. Amendment effective April 29, 1993.

1983 Amendments — Composite Section: Chapter 9 made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981.)

Chapter 567 substituted (1) allowing the parties to agree in writing to an interest rate not more than 6% above the prime rate for former text, which read: "(1) On amounts up to $150,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 4 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement.

(2) On amounts exceeding $150,000 and up to $300,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 5 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement.

(3) On amounts exceeding $300,000, parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed according to the terms of the agreement."; and inserted (2) providing that a loan that is not usurious when made is lawful for the duration of the loan provided it is not substantially changed (the subsection does not apply to loan renewals).

The amendments made by Ch. 567 were made to the version of 31-1-107, which was to be revived July 1, 1983. Chapter 9 made the temporary version of 31-1-107 permanent and was effective February 3, 1983. The Code Commissioner has added subsection (3), which was the amendment made permanent by Ch. 9, to the version of 31-1-107 as amended by Ch. 567.

1981 Amendment: Inserted (4) providing that the section does not apply to regulated lenders.

Prime Rate Determination: The prime rate as published in the Wall Street Journal referred to in this section may be found under the "Money Rates" heading in the Wall Street Journal.

Case Notes

Contractually Agreed Interest Rate Not Considered Usurious: A construction contract set out that 1.5% a month interest would be owed on everything unpaid after 30 days. Defendant did not challenge the interest rate and signed the contract. However, during construction lien proceedings, defendant cited this section and asserted that the interest rate was usurious. The District Court awarded prejudgment interest at the contract rate, and on appeal, the Supreme Court affirmed. The usury rate in this section refers to loans of money, not construction liens. Defendant agreed to the rate and the District Court did not err in applying it. Johnston v. Palmer, 2007 MT 99, 337 M 101, 158 P3d 998 (2007).

Calculation of Usury Penalty Using Maturity Date of Note Rather Than Trial Date Affirmed: Plaintiff foreclosed on a loan to defendant. Defendant contended that the loan terms contained a usurious interest rate. The District Court agreed and calculated a usury penalty against plaintiff using the date that the note was executed until the maturity date of the loan. Defendant argued that the rate should instead have been imposed through the date of the trial. On appeal, the Supreme Court found no precedent to support defendant's position. As in Rustics of Lindbergh Lake, Inc. v. Lease, 213 M 246, 690 P2d 440 (1984), the District Court was faced with a term loan with a specific maturity date, and had the usury penalty been calculated through the date of the trial, plaintiff would have owed defendant a substantial amount of money, which would have been clearly inequitable given that: (1) defendant borrowed money but never made a payment; (2) the loan carried a legal interest rate for current debt and it was only the default rate that was usurious; and (3) when plaintiff discovered the usurious default interest rate, the loan was retroactively recalculated to eliminate application of the usurious rate. Thus, the District Court's calculation was affirmed on equitable principles. Confederated Tribes of the Grand Ronde Community of Oreg. v. Quantum Five, Inc., 2004 MT 140, 321 M 396, 91 P3d 1255 (2004), distinguishing Bermes v. Sylling, 179 M 448, 587 P2d 377 (1978), and E.C.A. Envtl. Management Serv., Inc. v. Toenyes, 208 M 336, 679 P2d 213 (1984).

Applicability of Usury to Postdefault Interest: Montana usury statutes apply to detentions of money as well as loans and forebearances. The statutory definition of interest in 31-1-104 includes postdefault interest. Therefore, the District Court correctly applied the usury penalty in a case in which a lender sought to charge 18% interest in the event of default on a loan. Scarr v. Boyer, 250 M 248, 818 P2d 381, 48 St. Rep. 910 (1991).

Requirement of Written Agreement Not Permissive: The lower court held that certain loans between the parties could not accrue interest because minutes of a meeting did not constitute a written agreement pertaining to the payment of interest. The appellants argued that the use of the word "may" in the statute meant that a writing was not necessary. The Supreme Court held that the statute was not permissive and that a written agreement was required. World Realty Ltd. v. Goulding, 245 M 188, 800 P2d 161, 47 St. Rep. 1974 (1990).

Legal Rate When Note Signed Applicable for Loan Duration: The legal rate of interest at the time a note was signed in 1981 was 17%. Defendant claimed on appeal that the appropriate rate should have been 9½% because that was the maximum legal rate in 1987 when demand was made. However, under this section, the legal rate in 1981 applied for the duration of the loan. Poulsen's, Inc. v. Wood, 232 M 411, 756 P2d 1162, 45 St. Rep. 1154 (1988).

Interest Rate — Highest Contractual Rate: The provision of a lease agreement that required interest to be paid on delinquent payments at "the highest contractual rate permitted by law" clearly required the contractual rate at 10% as established by 31-1-107 (before amendment in 1981) to be applied, and not the 6% legal rate (prior to 1985 amendment to 31-1-106). IFG Leasing Co. v. Schultz, 217 M 434, 705 P2d 576, 42 St. Rep. 1307 (1985).

31-1-108. Penalty for usury — action to recover excessive interest.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Calculation of Usury Penalty Using Maturity Date of Note Rather Than Trial Date Affirmed: Plaintiff foreclosed on a loan to defendant. Defendant contended that the loan terms contained a usurious interest rate. The District Court agreed and calculated a usury penalty against plaintiff using the date that the note was executed until the maturity date of the loan. Defendant argued that the rate should instead have been imposed through the date of the trial. On appeal, the Supreme Court found no precedent to support defendant's position. As in Rustics of Lindbergh Lake, Inc. v. Lease, 213 M 246, 690 P2d 440 (1984), the District Court was faced with a term loan with a specific maturity date, and had the usury penalty been calculated through the date of the trial, plaintiff would have owed defendant a substantial amount of money, which would have been clearly inequitable given that: (1) defendant borrowed money but never made a payment; (2) the loan carried a legal interest rate for current debt and it was only the default rate that was usurious; and (3) when plaintiff discovered the usurious default interest rate, the loan was retroactively recalculated to eliminate application of the usurious rate. Thus, the District Court's calculation was affirmed on equitable principles. Confederated Tribes of the Grand Ronde Community of Oreg. v. Quantum Five, Inc., 2004 MT 140, 321 M 396, 91 P3d 1255 (2004), distinguishing Bermes v. Sylling, 179 M 448, 587 P2d 377 (1978), and E.C.A. Envtl. Management Serv., Inc. v. Toenyes, 208 M 336, 679 P2d 213 (1984).

Applicability of Usury to Postdefault Interest: Montana usury statutes apply to detentions of money as well as loans and forebearances. The statutory definition of interest in 31-1-104 includes postdefault interest. Therefore, the District Court correctly applied the usury penalty in a case in which a lender sought to charge 18% interest in the event of default on a loan. Scarr v. Boyer, 250 M 248, 818 P2d 381, 48 St. Rep. 910 (1991).

Intent Establishing Usury in Fact: An out-of-state creditor who was not aware of the Montana usury limit claimed District Court error in applying the usury penalty because the creditor did not intend to circumvent the usury statute. However, under the rationale of Mont. Nat'l Bank of Bozeman v. Kolokotrones, 167 M 92, 535 P2d 1017 (1975), the only intent required for usury is the intent to charge a particular rate of interest that is usurious in fact, regardless of whether a creditor knows the rate is illegal. Scarr v. Boyer, 250 M 248, 818 P2d 381, 48 St. Rep. 910 (1991).

Intent as Necessary Part of Usurious Transaction: In order for a transaction to be usurious, there must be an intent that the lender is to take more than the legal rate of interest for the sum loaned. Poulsen's, Inc. v. Wood, 232 M 411, 756 P2d 1162, 45 St. Rep. 1154 (1988), citing Hanson v. Bonner, 202 M 505, 661 P2d 421 (1983).

Prevailing Party: While no one factor should be considered in determining the prevailing party, the party that survives an action involving a counterclaim with the net judgment should generally be considered the successful party. Rustics of Lindbergh Lake, Inc. v. Lease, 213 M 246, 690 P2d 440, 41 St. Rep. 2092 (1984).

Assessment of Penalty for Usurious Demand Promissory Note up to Time of Trial Held Proper: Appellants loaned $7,000 to respondents in exchange for a demand promissory note at 11½% interest. In a suit for payment on the note, the District Court found that the note was usurious and calculated the forfeiture penalty based on the note's interest from the date of its making up to the time of trial. On appeal, appellants conceded that the note was usurious but claimed that the District Court had calculated the statutory penalty incorrectly. Appellants contended that since demand was made prior to the filing of the action on the note, the note matured at that time and appellants cannot be penalized for usurious interest after that date. The Supreme Court affirmed, ruling that since appellants did not cancel their rights under the note after demand, the obligation on the note continued after demand and through the trial. Therefore, assessment of the usury penalty up to the date of the trial was proper under 31-1-108. E.C.A. Envtl. Management Serv., Inc. v. Toenyes, 208 M 336, 679 P2d 213, 41 St. Rep. 388 (1984), distinguished in Rustics of Lindbergh Lake, Inc. v. Lease, 213 M 246, 690 P2d 440, 41 St. Rep. 2092 (1984).

"Prevailing Party" When Usury Penalty Assessed Against Party Exceeds That Party's Recovery: Appellants filed an action to recover money due on a promissory note that was usurious on its face. The District Court assessed a usury penalty against appellants which exceeded the balance due on the note. Thus, the net judgment was in favor of respondents. The court then assessed attorney fees against the appellants. On appeal, the Supreme Court affirmed, ruling that respondents had been properly found to be the prevailing party. E.C.A. Envtl. Management Serv., Inc. v. Toenyes, 208 M 336, 679 P2d 213, 41 St. Rep. 388 (1984).

Usury — Statute of Limitations: Withholding of interest by the defendant has the same effect as payment of interest under the usury statutes, and under 31-1-108 the 2-year Statute of Limitations applies. Arrowhead, Inc. v. Safeway Stores, Inc., 179 M 510, 587 P2d 411 (1978).

Actual Payment Unnecessary to Invoke Penalty: Actual payment of usurious interest is not a condition precedent to the forfeiture penalty contained in 31-1-108(1). Bermes v. Sylling, 179 M 448, 587 P2d 377 (1978), distinguished in Rustics of Lindbergh Lake, Inc. v. Lease, 213 M 246, 690 P2d 440, 41 St. Rep. 2092 (1984).

Intent: Letter demanding payment and including a schedule of principal and interest payments was sufficient to establish the intent of the bank to take more than the legal amount of interest. Mont. Nat'l Bank of Bozeman v. Kolokotrones, 167 M 92, 535 P2d 1017 (1975).

Penalty: Computation of penalty for usury does not rest on the difference between the amount of interest charged and the maximum amount that could have legally been charged, but is simply twice the amount of interest appearing on the face of the note. Mont. Nat'l Bank of Bozeman v. Kolokotrones, 167 M 92, 535 P2d 1017 (1975).

Demand for Double Penalty: Demand must be made within 2 years after payment of usurious interest under 31-1-108(2), but such demand need not be made and such limitation does not apply to obtain relief under 31-1-108(1). Bowden v. Gabel, 105 M 477, 76 P2d 334 (1937).

Pleadings: Borrower from a building and loan association must specially plead usury by allegations clearly showing the amount of such usurious interest claimed. U.S. Bldg. & Loan Ass'n v. Gardiner, 87 M 586, 289 P 555 (1930).

Law Review Articles

". . . And Attorney Fees to the Prevailing Party": Recovering Attorney Fees Under Montana Statutory Law, Williams, 46 Mont. L. Rev. 119 (1985).

31-1-109. When interest becomes part of principal.

Case Notes

Simple Interest Payable Absent Agreement for Payment of Compound Interest: The District Court ordered one partner to pay simple interest on the amount owed to a partnership for the purchase of a partnership interest. The other partner contended that compound interest rather than simple interest should be paid because the amount owed was analogous to the debt on a loan that required payment of compound interest. The Supreme Court noted that under this section, parties may agree in writing to the payment of compound interest, but absent an agreement in writing, Montana law does not provide for compound interest, so the District Court did not err in requiring payment of simple interest on the deficit capital account. McCormick v. Brevig, 2007 MT 195, 338 M 370, 169 P3d 352 (2007).

No Retroactive Effect: This section, providing that parties may contract in writing that unpaid interest shall become a part of the principal and draw interest, did not affect notes or agreements entered before its adoption. An antecedent agreement to pay interest on interest to become due would be void; however, the parties could substitute a new note for an old one which was due and incorporate in the new note the unpaid interest of the old note. The guarantor of the note and its renewals was required to pay interest on the accrued interest of the old note which was made part of the principal. He was not relieved of his obligation on the basis that his burden was increased. Stanford v. Coram, 26 M 285, 67 P 1005 (1902).

31-1-111. Definition of regulated lender.

Compiler's Comments

2013 Amendment: Chapter 278 in (1) after "deferred deposit loan licensee" deleted "title loan licensee"; and made minor changes in style. Amendment effective December 31, 2013.

2007 Amendments — Composite Section: Chapter 369 in (1) in introductory clause near middle inserted reference to residential mortgage lender licensee; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 451 in (1) near middle of introductory clause after "licensee" inserted "deferred deposit loan licensee"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 497 in (1) in middle of introductory clause inserted "title loan licensee"; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 140 near end of introductory clause inserted reference to 31-1-116; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: In (1), after "bank holding company", inserted "or a mutual or stock insurance company".

1985 Amendment: In (1) in opening clause, inserted "consumer loan licensee".

1983 Amendment: Made section permanent. (Section was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981.)

31-1-112. Interest rate limitation exemption — regulated lenders — merchant finance.

Compiler's Comments

2013 Amendment: Chapter 278 in (1) after "deferred deposit loan licensee" deleted "title loan licensee"; and made minor changes in style. Amendment effective December 31, 2013.

2010 Amendment by Initiative: Initiative Measure No. 164, proposed by initiative petition and approved at the general election held November 2, 2010, in (1) near beginning after "lender" inserted exception clause.

Findings: Section 1, Initiative Measure No. 164, provided: "The people of Montana find that some lenders are charging Montanans over 400% interest annually, that excessive interest rates can lead Montana families into a debt trap of repeat borrowing, that the United States congress has enacted laws capping interest rates on loans to military families at 36% annually, and that responsible small loans are available at interest rates of 36% annually or less."

Effective Date: Section 9, Initiative Measure No. 164, provided: "[This act] applies to all transactions governed hereby entered into on or after January 1, 2011."

1983 Amendments: Chapter 9 made (1) permanent.

Chapter 22 made (2) permanent. (Section was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981; sec. 5, Ch. 276, L. 1981.)

Case Notes

Points Charged as Flat Fee on Loans Not Considered Interest — Charging Unauthorized Fees Violative of Consumer Loan Act: A lender charged a loan fee, called points, upon the origination of real estate-secured loans. The lender contended that the points were considered interest on the loan and were thus permissible under the Montana Consumer Loan Act (CLA). The Supreme Court disagreed. Interest is generally defined as a charge made for the use, forbearance, or detention of money. A flat fee front-loaded into a loan, computed as a percentage of the loan but bearing no direct relation to actual costs of specific services performed and which did not constitute a charge for use of the lender's money over time, is not interest, but rather is a fee charged by the lender for making the loan. Such fees are not authorized by the CLA and are thus prohibited. To protect borrowers, the court declined to interpret the CLA in a way that contains a loophole whereby predatory lenders could add points onto the beginning of an interest-bearing loan and thereby escape the requirement that the points be at least partially refunded if the loan is prepaid or refinanced. (See 2005 amendment to 31-1-104.) Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 M 290, 104 P3d 1080 (2004).

31-1-115. Issuing credit cards to minors — collection of debt.

Compiler's Comments

Applicability: Section 4, Ch. 21, L. 1997, provided: "[This act] applies to credit cards or similar loan advance access devices issued after [the effective date of this act]." Effective July 1, 1997.

Effective Date: Section 5, Ch. 21, L. 1997, provided: "[This act] is effective July 1, 1997."

31-1-116. Commercial loans — when written agreement required.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Part 2
Retail Installment Sales

Part Administrative Rules

Title 23, chapter 19, ARM Consumer Protection Office.

Part Case Notes

Private Right of Action Not Conferred by Legislature — Retail Installment Sales Act: The plaintiffs purchased a mobile home and financed it through an installment contract. The installment contract required the plaintiffs to make monthly payments and pay applicable late fees. The plaintiffs filed a putative class action in District Court, alleging that the Montana Retail Installment Sales Act (RISA) prohibited recovery of any interest, finance charges, or late fees on installment contracts for the purchase of a mobile home. The District Court granted summary judgment for the defendants on the basis that RISA does not confer a private cause of action. On appeal, the Supreme Court held that a party is generally not entitled to obtain private enforcement of a regulatory statute when not intended by the Legislature to be enforceable by private parties; however, in certain limited circumstances, the Legislature's failure to specify a private cause of action is not inconsistent with an intent to have a remedy available to persons benefited by the legislation. Applying the four-part test in Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 Mont. 290, 104 P.3d 1080, the Supreme Court ultimately held the Legislature did not intend to grant a private right of action under RISA. Somers v. Cherry Creek Dev., Inc. and RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281.

Credit Sale of Diesel Fuel Held Neither "Retail Installment Contract" nor "Retail Charge Account Agreement": When in a sale of diesel fuel the buyer signed an invoice creating an obligation to pay within 30 days and providing for assessment of a finance charge if that obligation was not fulfilled, the Supreme Court ruled that the transaction did not involve installment payments and was not subject to the Montana Retail Installment Sales Act. E.C.A. Envtl. Management Serv., Inc. v. Toenyes, 208 M 336, 679 P2d 213, 41 St. Rep. 388 (1984).

Montana Retail Installment Sales Act Inapplicable to Leases When Lessee Cannot Purchase Leased Goods: "Retail installment contract" is defined in 31-1-102 to include certain types of leases in which the lessee may ultimately purchase the leased goods. In this case, the lease did not provide in any way for the lessees to become owners of the leased property, so the transaction did not come within this part. Doll v. Major Muffler Centers, Inc., 208 M 401, 687 P2d 48, 41 St. Rep. 429 (1984), followed in Pollard v. Bozeman, 228 M 176, 741 P2d 776, 44 St. Rep. 1436 (1987).

Part Law Review Articles

The Plastic Jungle, Kennedy, 31 Mont. L. Rev. 29 (1969).

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1 (Fall 1959).

Montana Legislature Summary, 1959 (Retail Installment Sales), 20 Mont. L. Rev. 136 (1959).

31-1-201. Short title.

Case Notes

Private Right of Action Not Conferred by Legislature — Retail Installment Sales Act: The plaintiffs purchased a mobile home and financed it through an installment contract. The installment contract required the plaintiffs to make monthly payments and pay applicable late fees. The plaintiffs filed a putative class action in District Court, alleging that the Montana Retail Installment Sales Act (RISA) prohibited recovery of any interest, finance charges, or late fees on installment contracts for the purchase of a mobile home. The District Court granted summary judgment for the defendants on the basis that RISA does not confer a private cause of action. On appeal, the Supreme Court held that a party is generally not entitled to obtain private enforcement of a regulatory statute when not intended by the Legislature to be enforceable by private parties; however, in certain limited circumstances, the Legislature's failure to specify a private cause of action is not inconsistent with an intent to have a remedy available to persons benefited by the legislation. Applying the four-part test in Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 Mont. 290, 104 P.3d 1080, the Supreme Court ultimately held the Legislature did not intend to grant a private right of action under RISA. Somers v. Cherry Creek Dev., Inc. and RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281.

31-1-202. Definitions — scope.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 63 inserted definition of conspicuous; in definitions of goods and motor vehicle substituted "15 U.S.C. 1602(w)" for "15 U.S.C. 1602(v)"; in definition of sales finance company after "investment company" inserted "credit union"; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 123 in definition of goods and in definition of motor vehicle in (iii) substituted "15 U.S.C. 1602(w)" for "15 U.S.C. 1602(v)"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in definition of goods at end inserted reference to dwellings and deleted former second sentence that read: "The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it"; in definition of motor vehicle inserted (iii) exempting dwellings; inserted (2)(c) exempting transactions governed by Title 32, chapter 9, part 1; and made minor changes in style. Amendment effective October 1, 2011.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of administration for reference to department of commerce and substituted "part 10" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1993 Amendment: Chapter 198 in definition of official fees inserted (ii) concerning the premium for insurance in lieu of filing, recording, or perfecting a title or lien; and made minor changes in style.

1987 Amendment: Near end of (1)(m) inserted "average daily" before "balance" and after "account" inserted "during the billing cycle or the buyer's balance".

1985 Amendment: In (1)(g) near beginning, after "motorcycle", inserted "quadricycle" (effective January 1, 1986).

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1)(b).

Case Notes

No Private Cause of Action Under 2007 Version of Statute: A plaintiff appealed entry of summary judgment, arguing that she had a private cause of action under the 2007 version of the Montana Retail Installment Sales Act (RISA). The Supreme Court applied its analysis from Ibsen v. Caring for Montanans, Inc., 2016 MT 111, 383 Mont. 346, 371 P.3d 446, and Wombold v. Assocs. Fin. Servs. Co of Mont., Inc., 2004 MT 397, 325 Mont. 290, 104 P.3d 1080, and held that the 2007 version of RISA is an administrative statute authorizing government enforcement, not private action. Strauser v. RJC Inv., Inc., 2019 MT 163, 396 Mont. 348, 445 P.3d 803.

Plaintiff Entitled to Declaratory Judgment: A party to an installment loan contract appealed dismissal of her case for failure to state a claim when she asked for a declaratory judgment clarifying her legal relationship to her creditor under the Retail Installment Sales Act. On the facts presented, the Supreme Court reversed and remanded to the District Court for a clarification of the plaintiff's rights and legal obligations. Strauser v. RJC Inv., Inc., 2019 MT 163, 396 Mont. 348, 445 P.3d 803.

Contract Not Required in Retail Sales Agreement When Sale Not Intended to Be on Installment Basis: Defendants purchased lumber from plaintiff's retail lumber business. When payment was not received within 30 days, plaintiff sent a bill requesting payment in full and adding interest on the account at 18% a year. The District Court granted summary judgment for plaintiff. Defendants appealed on grounds that summary judgment was improper because there was no written agreement between the parties providing for late payment charges, as required by 31-1-501, and cited the definition of retail seller in this section, which requires that a retail seller have a written agreement with the retail buyer. The Supreme Court held that the District Court correctly concluded that a written agreement is not required to charge and collect a late payment on any accounts 30 days past due in the retail sales arena when the sale is not anticipated to be on an installment basis. Sales under 31-1-501 do not apply to retail installment contracts or retail charge account agreements regulated under this part, so the definition in this section is inapplicable to an interpretation of 31-1-501. Aldrich & Co. v. Ellis, 2002 MT 177, 311 M 1, 52 P3d 388 (2002).

Determination of Vehicle Ownership — Installment Sales Contract Not Indicative of Ownership for Insurance Purposes: Jordet, an adult, jointly purchased a vehicle for the exclusive use of his minor sister-in-law, who made the downpayment, repaid registration and license fees, made the only installment payment, purchased separate insurance, possessed the only keys, and maintained sole use and control of the vehicle. The District Court decided that the term "owned vehicle" in Jordet's automobile policy included the jointly owned vehicle and that Jordet's signature on the installment sales contract conclusively placed the vehicle under his policy. The Supreme Court reversed, noting that the purchase of property and the insurance of property are distinct transactions and that Jordet's signature on the sales contract did not establish ownership for insurance purposes. Implicit in ownership is the ability to control how, when, where, and by whom the property will be used. Since Jordet never exercised any of the indicia of ownership that would be compatible with his insuring the vehicle, it was not an "owned vehicle" under the terms of his policy. Truck Ins. Exch. v. Nelson, 228 M 233, 743 P2d 572, 44 St. Rep. 1482 (1987).

Lease With Option to Purchase — Landlord Responsibility for Taxes: The city entered into an agreement with Pollard for construction and lease of a vehicle storage building, with an option to purchase throughout the term of the lease. After the city occupied the building, Pollard received notice that taxes had been assessed and were owing. Pollard maintained that the city had, by terms of the lease agreement, purchased the building and that he was not responsible for the taxes. He relied on the holding in Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985), that the lease was in fact a sale to the city and that the building was in effect a public works project. The Supreme Court found that the option to buy was not a sale and imposed no obligation to purchase. Rather, it found that the agreement fit the definition of a retail installment contract. Title bestowing ownership had not transferred to the city, so owner Pollard was responsible for the taxes on the building. Pollard v. Bozeman, 228 M 176, 741 P2d 776, 44 St. Rep. 1436 (1987).

Lease Not Type Included in Definition of "Retail Installment Contract": "Retail installment contract" is defined in this section to include certain types of leases in which the lessee may ultimately purchase the leased goods. In this case, the lease did not provide in any way for the lessees to become owners of the leased property, so the transaction did not come within this part. Doll v. Major Muffler Centers, Inc., 208 M 401, 687 P2d 48, 41 St. Rep. 429 (1984), followed in Pollard v. Bozeman, 228 M 176, 741 P2d 776, 44 St. Rep. 1436 (1987).

Credit Sale of Diesel Fuel Held Neither "Retail Installment Contract" nor "Retail Charge Account Agreement": When in a sale of diesel fuel the buyer signed an invoice creating an obligation to pay within 30 days and providing for assessment of a finance charge if that obligation was not fulfilled, the Supreme Court ruled that the transaction did not involve installment payments and was not subject to the Montana Retail Installment Sales Act. E.C.A. Envtl. Management Serv., Inc. v. Toenyes, 208 M 336, 679 P2d 213, 41 St. Rep. 388 (1984).

Attorney General's Opinions

Trail Motorcycle a Motor Vehicle: A trail motorcycle is a motor vehicle under this section, while snowmobiles and "all-terrain vehicles" are not. 34 A.G. Op. 59 (1972) (decided prior to 1985 amendment to this section).

31-1-203. Notice and opportunity for hearing — service — penalties — exception.

Compiler's Comments

2013 Amendment: Chapter 63 in (1) substituted current language concerning notice and opportunity for an administrative hearing for former text that read: "Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both"; inserted (2) concerning penalties, restitution, and reimbursement; inserted (3) concerning suspending, revoking, or conditioning licenses; in (4) at beginning inserted "in addition to other penalties provided by law", before "accidental" inserted "isolated", and inserted last sentence prohibiting recovery or retention of erroneous overcharges; in (5) substituted "this part" for "subsection (3)"; deleted former (3) that read: "(3) A person may not engage in any device or subterfuge intended to evade the requirements of this chapter including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services"; inserted (6) regarding service of process; and made minor changes in style. Amendment effective October 1, 2013.

2010 Amendment by Initiative: Initiative Measure No. 164, proposed by initiative petition and approved at the general election held November 2, 2010, in (2) at end inserted last sentence providing for additional violation in Title 30; and inserted (3) relating to engaging in any device or subterfuge for certain purposes.

Findings: Section 1, Initiative Measure No. 164, provided: "The people of Montana find that some lenders are charging Montanans over 400% interest annually, that excessive interest rates can lead Montana families into a debt trap of repeat borrowing, that the United States congress has enacted laws capping interest rates on loans to military families at 36% annually, and that responsible small loans are available at interest rates of 36% annually or less."

Effective Date: Section 9, Initiative Measure No. 164, provided: "[This act] applies to all transactions governed hereby entered into on or after January 1, 2011."

Case Notes

No Private Cause of Action Under 2007 Version of Statute: A plaintiff appealed entry of summary judgment, arguing that she had a private cause of action under the 2007 version of the Montana Retail Installment Sales Act (RISA). The Supreme Court applied its analysis from Ibsen v. Caring for Montanans, Inc., 2016 MT 111, 383 Mont. 346, 371 P.3d 446, and Wombold v. Assocs. Fin. Servs. Co of Mont., Inc., 2004 MT 397, 325 Mont. 290, 104 P.3d 1080, and held that the 2007 version of RISA is an administrative statute authorizing government enforcement, not private action. Strauser v. RJC Inv., Inc., 2019 MT 163, 396 Mont. 348, 445 P.3d 803.

Private Right of Action Not Conferred by Legislature — Retail Installment Sales Act: The plaintiffs purchased a mobile home and financed it through an installment contract. The installment contract required the plaintiffs to make monthly payments and pay applicable late fees. The plaintiffs filed a putative class action in District Court, alleging that the Montana Retail Installment Sales Act (RISA) prohibited recovery of any interest, finance charges, or late fees on installment contracts for the purchase of a mobile home. The District Court granted summary judgment for the defendants on the basis that RISA does not confer a private cause of action. On appeal, the Supreme Court held that a party is generally not entitled to obtain private enforcement of a regulatory statute when not intended by the Legislature to be enforceable by private parties; however, in certain limited circumstances, the Legislature's failure to specify a private cause of action is not inconsistent with an intent to have a remedy available to persons benefited by the legislation. Applying the four-part test in Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 Mont. 290, 104 P.3d 1080, the Supreme Court ultimately held the Legislature did not intend to grant a private right of action under RISA. Somers v. Cherry Creek Dev., Inc. and RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281.

31-1-211. Powers of department.

Compiler's Comments

2013 Amendment: Chapter 63 in (1) deleted second, third, and fourth sentences that read: "All rules of general application must be filed in the office of the department. A copy of every rule must be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt the licensee from the duty of compliance with those rules lawfully adopted under the provisions of this section." Amendment effective October 1, 2013.

1995 Amendment: Chapter 265 in (1), near beginning, substituted "may" for "shall"; and made minor changes in style. Amendment effective March 27, 1995.

31-1-212. Investigations and complaints.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Administrative Rules

Title 23, chapter 19, ARM Consumer Protection Office.

Case Notes

Private Right of Action Not Conferred by Legislature — Retail Installment Sales Act: The plaintiffs purchased a mobile home and financed it through an installment contract. The installment contract required the plaintiffs to make monthly payments and pay applicable late fees. The plaintiffs filed a putative class action in District Court, alleging that the Montana Retail Installment Sales Act (RISA) prohibited recovery of any interest, finance charges, or late fees on installment contracts for the purchase of a mobile home. The District Court granted summary judgment for the defendants on the basis that RISA does not confer a private cause of action. On appeal, the Supreme Court held that a party is generally not entitled to obtain private enforcement of a regulatory statute when not intended by the Legislature to be enforceable by private parties; however, in certain limited circumstances, the Legislature's failure to specify a private cause of action is not inconsistent with an intent to have a remedy available to persons benefited by the legislation. Applying the four-part test in Wombold v. Associates Financial Serv.

Co. of Mont., Inc., 2004 MT 397, 325 Mont. 290, 104 P.3d 1080, the Supreme Court ultimately held the Legislature did not intend to grant a private right of action under RISA. Somers v. Cherry Creek Dev., Inc. and RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281.

31-1-221. Licensing of sales finance companies required.

Compiler's Comments

2013 Amendment: Chapter 63 in (1) after "savings and loan association" inserted "or credit union"; in (2) substituted "in the form and submitted in the manner that the department may direct" for "under oath, and in the form prescribed by the department" and at end deleted former text that read: "The application must contain:

(a) the name of the applicant;

(b) the date of incorporation, if incorporated;

(c) the address where the business is or is to be conducted and similar information with regard to any branch office of the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) other pertinent information as the department may require"; in (3) substituted "the applicant's principal place of business and for each additional branch location at which the applicant engages in sales finance company activities concerning retail installment contracts between retail sellers and buyers in this state" for "each place of business of the licensee in this state" and inserted last sentence concerning maintenance of physical place of business; deleted former (4) that read: "(4) Each license must specify the location of the office or branch and must be conspicuously displayed there. If the location is changed, the department shall endorse the change of location of the license without charge"; in (4) inserted exception clause, substituted "submission of a complete license" for "filing of a license", and after "payment of" substituted "required fees" for "the license fee"; in (5) inserted first sentence concerning remittance of fees and in second sentence substituted "the department's portion of fees charged and collected" for "fees collected"; and made minor changes in style. Amendment effective October 1, 2013.

2003 Amendment: Chapter 9 near beginning of (1) after "company" inserted "including the purchase of retail installment contracts that are entered into"; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: Inserted (6) providing for fees collected under the chapter to be deposited in the state special revenue fund.

Administrative Rules

ARM 2.59.1203 License renewals.

ARM 2.59.1208 Reinstatement of expired licenses — sales finance company.

ARM 2.59.1521 Reinstatement of expired licenses — deferred deposit loans.

31-1-222. Denial of licenses.

Compiler's Comments

2013 Amendment: Chapter 63 at beginning substituted "Subject to the notice and opportunity for hearing provisions of 31-1-203, initial licensure or license renewal may be denied" for "Renewal of a license originally granted under 31-1-221 may be denied or a license may be suspended or revoked"; in (1) after "fact" inserted "or material omission of fact" and after "license" inserted "or renewal"; inserted (2) relating to defrauding retail buyer; inserted (3) relating to license revocation; deleted former (1)(b), (1)(c), and (1)(d) that read: "(b) willful failure to comply with any provision of this part relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature of those particulars required to be stated or furnished to the retail buyer under this part"; deleted former (2) and (3) that read: "(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of the licensee's employees while acting as the licensee's agent if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show

cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice must contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license must recite the grounds upon which it is based. The order must be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at the licensee's principal place of business.

(c) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a lawful retail installment contract acquired previously by the licensee"; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-1-223. Department authorized to participate in nationwide licensing system for purposes of licensing sales finance companies — rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2013.

Administrative Rules

ARM 2.59.1201 Adoption of standardized forms and procedures of the nationwide multistate licensing system (NMLS).

ARM 2.59.1203 License renewals.

ARM 2.59.1208 Reinstatement of expired licenses — sales finance company.

ARM 2.59.1515 Adoption of standardized forms and procedures of the nationwide multistate licensing system (NMLS).

ARM 2.59.1521 Reinstatement of expired licenses — deferred deposit loans.

31-1-231. Requirements of retail installment contracts.

Compiler's Comments

2013 Amendment: Chapter 63 in (2) substituted "conspicuously disclose the following notice" for "contain the following notice in a size equal to at least 10-point bold type", in first item after "blank spaces" inserted language relating to blank spaces for serial number or similar information and installment due date, and in second item substituted "bearing your signature" for "you sign"; in (3) substituted "contain a specific statement that is conspicuously disclosed" for "contain, in a size equal to at least 10-point bold type, a specific statement"; in (7) in first sentence substituted "signing of the contract" for "execution of the contract", substituted "serial number" for "identifying numbers or marks", and substituted "after it is signed" for "after its execution"; in (8) substituted "a seller that has complied with all of the requirements of the act must be considered to have satisfied the requirements of subsections (2) through (6) of this section" for "the seller may, instead of complying with the requirements of subsections (2) through (7), comply with all requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1) of this section"; inserted (9) prohibiting evading requirements of this part; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Inserted (8) allowing seller the option of complying with the requirements of the federal Truth in Lending Act if the transaction is subject to that federal legislation.

Case Notes

Attorney's Fees: This section, unlike other sections of this Code governing recovery of attorney's fees, is permissive and designed to inform the holder of retail installment sale contract what he may recover in addition to damages when the contract has been breached by the buyer; unless it is stipulated by contract, the buyer has no right to attorney fees should he successfully resist the action on the contract. Stalcup v. Mont. Trailer Sales & Equip. Co., 146 M 494, 409 P2d 542 (1965).

31-1-232. Buyer's right of rescission.

Compiler's Comments

2013 Amendment: Chapter 63 in first sentence before "or mail" inserted "in person"; inserted second sentence requiring seller to retain proof of delivery of mailed contract; and in last sentence before "delivery" inserted "personal" and after "contract" substituted "signed by the seller must be conspicuous" for "must be in a size equal to at least 10-point bold type". Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-1-233. Insurance.

Compiler's Comments

1999 Amendment: Chapter 472 in (2) at end deleted "and must be countersigned by a duly licensed resident insurance producer authorized to engage in the insurance business in this state"; in (6) at beginning of introductory clause after "The" substituted "holder" for "seller"; in (6)(b) at end substituted "holder" for "seller"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1991 Amendment: In (2) and two places in (6) substituted "insurance producer" for "agent"; and made minor changes in style.

31-1-234. Transfer of equity — fee.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Increased fee from $15 to $50.

31-1-235. Delinquency fee.

Compiler's Comments

2013 Amendment: Chapter 63 in (1) substituted "alternatively, the holder may calculate a fixed delinquency fee that is expressed as an interest rate not exceeding 15% of each installment in default" for "in lieu of the charge, interest after maturity on each installment not exceeding the highest lawful contract rate" and inserted last sentence concerning calculation of delinquency charge; inserted (2) concerning collection of interest; in (3) at beginning substituted "a retail installment" for "in addition to a delinquency charge, the" and before "attorney fees" inserted "both a delinquency charge as permitted in subsection (1) and"; and made minor changes in style. Amendment effective October 1, 2013.

1997 Amendment: Chapter 266 near beginning of first sentence, after "holder", inserted "of a retail installment contract or a retail charge account agreement" and after "amount not" substituted "to exceed $10" for "in excess of 5% of each installment or $15, whichever is less"; and made minor changes in style.

1993 Amendment: Chapter 198 increased the delinquency charge from $5 to $15; and made minor changes in style.

Case Notes

Late Payment Penalty as Percentage of Outstanding Balance: A finance charge is the expression of the cost of the credit as a dollar amount. It includes but is not limited to interest. Defendant signed a retail installment contract that provided that in the event of default, the finance charge would continue to accrue at the annual percentage rate, which was established in the contract at 12%. Defendant argued that the denomination of late-payment charges as finance charges violated this section of the Montana Retail Installment Sales Act. The Supreme Court found that argument to be an unduly restrictive attempt to exalt form over substance, in light of defendant's agreement to a late payment penalty of 12% of the outstanding principal. The District Court did not err in treating this late payment structure as equivalent to a simple rate of interest. Cessna Fin. Corp. v. Chambers, 252 M 315, 828 P2d 1373, 49 St. Rep. 271 (1992).

Law Review Articles

". . . And Attorney Fees to the Prevailing Party": Recovering Attorney Fees Under Montana Statutory Law, Williams, 46 Mont. L. Rev. 119 (1985).

31-1-236. Notice and receipt of payment.

Compiler's Comments

2013 Amendment: Chapter 63 in (2) after "contract" deleted "and upon written demand made by the buyer". Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-1-241. Finance charge limitation.

Compiler's Comments

2013 Amendment: Chapter 63 in (4) substituted "at least 45 days before" for "in the billing cycle prior to". Amendment effective October 1, 2013.

2010 Amendment by Initiative: Initiative Measure No. 164, proposed by initiative petition and approved at the general election held November 2, 2010, in (1) and (2) at beginning deleted "Notwithstanding the provisions of any other law" and at end inserted "but the finance charge may not exceed 36% per annum".

Findings: Section 1, Initiative Measure No. 164, provided: "The people of Montana find that some lenders are charging Montanans over 400% interest annually, that excessive interest rates can lead Montana families into a debt trap of repeat borrowing, that the United States congress has enacted laws capping interest rates on loans to military families at 36% annually, and that responsible small loans are available at interest rates of 36% annually or less."

Effective Date: Section 9, Initiative Measure No. 164, provided: "[This act] applies to all transactions governed hereby entered into on or after January 1, 2011."

1997 Amendment: Chapter 267 substituted (3) regarding computation of the finance charge for (2)(a) and (2)(b) that read: "(a) Except as provided in subsection (2)(b), the finance charge shall be computed from month to month (which need not be a calendar month) or other regular billing cycle period by using the average daily balance of the account during the billing cycle without including in the computation the amount of purchases charged to the account during that billing cycle.

(b) Nothing in this section prevents a retail seller and a buyer from agreeing to the computation of the finance charge by using the ending balance of the account as of the last day of the billing cycle period less the amount of purchases charged to the account during that billing cycle"; in (4), in second sentence after "change in the", substituted "billing cycle" for "two billing cycles"; adjusted subsection references; and made minor changes in style.

1987 Amendment: At beginning of (2)(a) inserted exception clause, near middle substituted "average daily balance" for "ending balance", substituted "during" for "as of the last day of", and substituted "without including in the computation" for "less"; and inserted (2)(b) allowing retail seller and buyer to agree to compute finance charge by using ending balance.

1983 Amendment: Inserted (6) allowing a maximum finance charge of 50 cents if the charge determined pursuant to subsection (2) is less than that amount and made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 5, Ch. 276, L. 1981.)

1981 Amendment: Section 1, Ch. 276, L. 1981, deleted all of the former section except the opening phrase of (1) ending with "a retail installment contract shall" and inserted the rest of the section. The former text read: "(1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(a) as to motor vehicles:

(i) class 1—any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, $7 per $100 per year;

(ii) class 2—any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made, $9 per $100 per year;

(iii) class 3—any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than 2 years prior to the year in which the sale is made, $11 per $100 per year;

(b) as to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over $5,000, $9 per $100 per year. This subsection shall not apply to agricultural equipment.

(c) as to any manufactured structure or recreational vehicle, $9 per $100 per year;

(d) as to services and goods other than as provided under subsections (1)(a), (1)(b), and (1)(c) above:

(i) on so much of the principal balance as does not exceed $300, $11 per $100 per year;

(ii) if the principal balance exceeds $300 but is less than $1,000, $9 per $100 per year on that portion over $300;

(iii) if the principal balance exceeds $1,000, $7 per $100 per year on that portion over $1,000.

(2) Such finance charge shall be computed on the principal balance as determined under 31-1-231(5) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of $20 may be charged on any retail installment contract.

(3) When a retail installment contract provides for payment other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) hereof, having due regard for the schedule of payments in the contract.

(4) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for and the seller or holder may charge, collect, and receive a finance charge as specified herein for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed 1 ½% for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:

(a) the average daily balance in the account in the billing cycle period;

(b) the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle; or

(c) the median amount within a $10 range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.

(5) If the finance charge so determined pursuant to (4) above for such monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged, received, and collected for such period."

Case Notes

Retail Installment Sale — Evidence Supporting — Allowable Interest: Defendant failed to make payment for materials supplied by plaintiff. The invoices of purchase stated that an interest rate of 1.5% a month would be levied on past-due accounts. Plaintiff filed a mechanics' lien (now construction lien) representing the amount due and the service charge of 1.5% a month. Plaintiff sued to foreclose the lien. Defendant filed a confession of judgment for the full amount of purchase, plus interest at a legal rate. Plaintiff rejected the confession of judgment. Judgment was entered in favor of plaintiff for the amount of purchase, plus interest at a rate of 10% a year. Plaintiff appealed seeking interest at the 1.5% a month rate. The Supreme Court held that the invoices, two of which were signed by both parties, describing the material purchased and stating the amount, including the interest rate to be charged, were sufficient to obligate defendant to pay the 1.5% charge on the unpaid balance. Although the invoices did not meet all the requirements of a retail installment contract, defendant's admission as to their authenticity and confession of judgment more than adequately evidenced that the purchases were retail installment sales. O'Neil Lumber Co. v. Nickelodeon Co., 190 M 25, 617 P2d 1291, 37 St. Rep. 1731 (1980).

Constitutionality: This act is constitutional both before and after the 1971 amendments making it applicable to revolving charge accounts. The finance charges permitted by this act are time-price differentials included in the price of goods purchased on credit and payable in installments and as such are not subject to constitutional or statutory limitations on interest rates. The act is a codification of the time-price doctrine. The act is not a special or local law regulating the rate of interest on money in violation of Art. V, sec. 26, 1889 Mont. Const. (Art. VI, sec. 12, 1972 Mont. Const.), since the finance charges imposed pursuant to the act are time-price differentials rather than interest. There is a reasonable basis for the classification and different treatment of those rates involved in revolving charge transactions. The act does not grant special or exclusive privileges as prohibited by Art. V, sec. 26, 1889 Mont. Const. (Art. VI, sec. 12, 1972 Mont. Const.), or interfere with the right to acquire property guaranteed by Art. III, sec. 3, 1889 Mont. Const. (Art. II, sec. 3, 1972 Mont. Const.), since the legislative classifications in the act are constitutionally permissible. Cecil v. Allied Stores Corp., 162 M 491, 513 P2d 704 (1973).

Revolving Charge Account Sales: This act, prior to amendment in 1971, regulated only "closed end" retail installment contracts and not revolving charge accounts. A retailer who imposed finance charges on revolving charge accounts on basis of balance from previous monthly billing cycle prior to 1971 amendment of this act was not in violation of this act since it was inapplicable. Cecil v. Allied Stores Corp., 162 M 491, 513 P2d 704 (1973).

Interest on Conditional Sales Contracts: In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them exceeded the maximum rate of 10% permitted by this section (amended by Ch. 276, L. 1981) and constituted a special law regulating the rate of interest on money, proscribed by Art. V, sec. 26, 1889 Mont. Const. (Art. VI, sec. 12, 1972 Mont. Const.), the federal court applied the doctrine of abstention and postponed further action until the issue was determined by the Supreme Court of Montana. B-W Acceptance Corp. v. Torgerson, 234 F. Supp. 214 (D.C. Mont. 1964).

Law Review Articles

Finance Rates in Consumer Installment Credit Sales: The Time-Price Doctrine in Montana, Strong, 34 Mont. L. Rev. 150 (1973).

31-1-242. Refunds on prepayment.

Compiler's Comments

2013 Amendment: Chapter 63 at beginning substituted "Notwithstanding any other provision of law or terms of any retail installment contract" for "Notwithstanding the provisions of any retail installment contract", after "anticipation of payments" in first sentence inserted "on a precomputed contract or for any other unearned fees calculated by use of the actuarial method", and inserted last sentence concerning refund amounts; deleted former (2) and (3) that read: "(2) In a contract where the period of the contract does not exceed 61 months, the amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning 1 month after prepayment is made bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than $1, no refund need be made.

(3) In any contract where the period of the contract exceeds 61 months, the amount of such refund is the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose, the applicable charge is the charge that would have been earned for that period if the contract were not precomputed, by applying to the unpaid principal balance, according to the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled"; and made minor changes in style. Amendment effective October 1, 2013.

1983 Amendment: At beginning of (2), inserted "In a contract where the period of the contract does not exceed 61 months,"; inserted (3) providing a method of computing the refund on prepayment for a contract that exceeds 61 months.

31-1-243. Refinancing retail installment contract.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 5, Ch. 276, L. 1981.)

1981 Amendment: Deleted language regarding refinancing motor vehicle retail installment contracts between "at the rate of the finance charge specified in 31-1-241" and "If all unpaid installments"; changed the reference at the end of the second sentence from "31-1-241(1)" to "31-1-241".

Part 3
Wage Brokers

31-1-303. Wage broker defined.

Case Notes

Contractor's Assignee: In an action by a bank as assignee of a contractor for a balance due on a contract assigned as security for a loan, an allegation in the answer that the assignment had not been acknowledged or filed with the County Clerk as required by 31-1-306 and 31-1-307 was properly stricken because the assignor was neither a wage earner nor an employee, and therefore the assignee was not a wage broker. Sec. St. Bank of Roy v. Melchert, 67 M 535, 216 P 340 (1923).

Indirect Consideration: One who parts with money either directly or indirectly, in consideration of the assignment of wages, is a wage broker within the meaning of this section. Costello v. Great Falls Iron Works, 59 M 417, 196 P 982 (1921).

31-1-304. Restrictions upon assignment of wages or salary.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-1-305. Interest on loans — amount and computation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 4
Pawnbrokers

Part Case Notes

State Regulation of Reservation Pawnshops: Montana has a substantial and important interest in protecting all of its citizens, Indian and non-Indian alike, from dishonest pawnbrokers, regardless of whether the pawnshop is located on or off the reservation. This purpose is effectuated by requiring accurate and detailed records of transactions in order to prevent the charging of excessive interest rates and to facilitate tracing of stolen merchandise. Because pawnshops are open to the entire public, the state has a substantial interest in regulating these businesses, including those located within the exterior boundaries of an Indian reservation. St. v. Schaefer, 239 M 437, 781 P2d 264, 46 St. Rep. 1811 (1989), distinguishing St. v. Greenwalt, 204 M 196, 663 P2d 1178 (1983).

Warranty of Title Breached When Pawnbroker Sold Stolen Goods: Defendant pawnshop operator who sold stolen property to plaintiff refused to give plaintiff a refund after the property was recovered by police. Defendant argued that he disclaimed any warranty of title to goods sold in his business by posting a sign alerting buyers that merchandise is sold "as is" and by writing the same notation on his sales slips. Defendant clearly breached the warranty of clear title under the U.C.C., 30-2-312, when he sold stolen goods because neither a thief nor his successor pass clear title to stolen goods. It was irrelevant that defendant claimed he did not know the goods were stolen. Warranty of title is not subject to the disclaimers found in 30-2-316 pertaining to fitness and merchantability. Defendant's conduct does not meet the disclaimer of warranty of title found in 30-2-312 because there was no agreement between defendant and plaintiff regarding the title of the goods. Brokke v. Williams, 235 M 305, 766 P2d 1311, 46 St. Rep. 6 (1989).

Return of Property — Conflict Between Civil and Criminal Statutes: When property is taken from a pawnbroker and held as evidence for an underlying criminal prosecution, the provisions of the criminal procedure statutes governing return of property apply rather than the civil pawnbroker statutes. The criminal statutes are the particular and specific statutes, and the pawnbroker statutes are general. The pawnbroker statutes control the situation when a private citizen discovers his property at a pawnbroker's shop, and no criminal prosecution grows out of the incident. In re Williams, 219 M 6, 709 P2d 1008, 42 St. Rep. 1800 (1985).

31-1-401. Interest pawnbrokers may receive — civil enforcement — prohibited activities.

Compiler's Comments

2013 Amendment: Chapter 278 in (4) after "deferred deposit loan licensee" deleted "or title loan licensee"; and made minor changes in style. Amendment effective December 31, 2013.

2010 Amendment by Initiative: Initiative Measure No. 164, proposed by initiative petition and approved at the general election held November 2, 2010, in (3)(b) substituted "this subsection (3)" for "this section"; inserted (4) relating to prohibitions on pawnbrokers and junk dealers without certain licenses; and inserted (5) relating to violations of (4) under a part of Title 30.

Findings: Section 1, Initiative Measure No. 164, provided: "The people of Montana find that some lenders are charging Montanans over 400% interest annually, that excessive interest rates can lead Montana families into a debt trap of repeat borrowing, that the United States congress has enacted laws capping interest rates on loans to military families at 36% annually, and that responsible small loans are available at interest rates of 36% annually or less."

Effective Date: Section 9, Initiative Measure No. 164, provided: "[This act] applies to all transactions governed hereby entered into on or after January 1, 2011."

1993 Amendment: Chapter 258 in second sentence of (1), after "charge", substituted "a fee of more than 25% of the amount of the loan for a 30-day period" for "more than 3% a month for interest, commission, discount, storage, and caring for property pledged" and inserted third and fourth sentences setting a maximum fee for extending a pawn agreement and clarifying what constitutes a fee; inserted (2) regarding forfeiture in cases of an excess fee; inserted (3) providing for recovery of attorney fees and an amount double the fee paid and providing a 2-year statute of limitations; and made minor changes in style. Amendment effective March 31, 1993.

Applicability: Section 3, Ch. 258, L. 1993, provided: "[This act] is applicable to all loans made after [the effective date of this act]." Effective March 31, 1993.

31-1-402. Pawnbroker to keep register.

Compiler's Comments

2015 Amendment: Chapter 222 in (1)(c) substituted "who pawned or sold the article" for "by whom the article was pawned or by whom purchased"; deleted former (2) that read: "(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer shall enter upon the register:

(a) the name of the purchaser;
(b) the time of the sale; and
(c) the price paid for the article"; in (2) substituted "be made available for inspection" for "always be open to inspection" and at end deleted "or other persons"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
Retail Sales — Late Payment Charges

31-1-501. Late payment charges — accounts receivable for merchandise sold at retail.

Case Notes

Contract Not Required in Retail Sales Agreement When Sale Not Intended to Be on Installment Basis: Defendants purchased lumber from plaintiff's retail lumber business. When payment was not received within 30 days, plaintiff sent a bill requesting payment in full and adding interest on the account at 18% a year. The District Court granted summary judgment for plaintiff. Defendants appealed on grounds that summary judgment was improper because there was no written agreement between the parties providing for late payment charges, as required by this section, and cited the definition of retail seller in 31-1-202, which requires that a retail seller have a written agreement with the retail buyer. The Supreme Court held that the District Court correctly concluded that a written agreement is not required to charge and collect a late payment on any accounts 30 days past due in the retail sales arena when the sale is not anticipated to be on an installment basis. Sales under this section do not apply to retail installment contracts or retail charge account agreements regulated under Title 31, ch. 1, part 2, so the definition in 31-1-202 is inapplicable to an interpretation of this section. Aldrich & Co. v. Ellis, 2002 MT 177, 311 M 1, 52 P3d 388 (2002).

Statement of Account Not in Compliance With Statutory Requirements — Late Payment Fee Not Chargeable: A seller is mandatorily required to set forth the provisions in 31-1-502(1) in the monthly statements supplied to a buyer, and if the statements fail to state any of the items, the late payment fee of 1½% a month provided for in this section may not be charged. Here, a monthly statement failed to state that a late payment fee would be incurred 30 days after purchase, that the interest charged was simple interest, and that the buyer could pay the total unpaid balance at any time. The District Court committed reversible error in holding that the monthly statement was in compliance with the statutory requirements. Aldrich & Co. v. Ellis, 2002 MT 177, 311 M 1, 52 P3d 388 (2002).

31-1-502. Periodic statement to be furnished to debtor.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Contract Not Required in Retail Sales Agreement When Sale Not Intended to Be on Installment Basis: Defendants purchased lumber from plaintiff's retail lumber business. When payment was not received within 30 days, plaintiff sent a bill requesting payment in full and adding interest on the account at 18% a year. The District Court granted summary judgment for plaintiff. Defendants appealed on grounds that summary judgment was improper because there was no written agreement between the parties providing for late payment charges, as required by 31-1-501, and cited the definition of retail seller in 31-1-202, which requires that a retail seller have a written agreement with the retail buyer. The Supreme Court held that the District Court correctly concluded that a written agreement is not required to charge and collect a late payment on any accounts 30 days past due in the retail sales arena when the sale is not anticipated to be on an installment basis. Sales under 31-1-501 do not apply to retail installment contracts or retail charge account agreements regulated under Title 31, ch. 1, part 2, so the definition in

31-1-202 is inapplicable to an interpretation of 31-1-501. Aldrich & Co. v. Ellis, 2002 MT 177, 311 M 1, 52 P3d 388 (2002).

Statement of Account Not in Compliance With Statutory Requirements — Late Payment Fee Not Chargeable: A seller is mandatorily required to set forth the provisions in subsection (1) of this section in the monthly statements supplied to a buyer, and if the statements fail to state any of the items, the late payment fee of 1 ½% a month provided for in 31-1-501 may not be charged. Here, a monthly statement failed to state that a late payment fee would be incurred 30 days after purchase, that the interest charged was simple interest, and that the buyer could pay the total unpaid balance at any time. The District Court committed reversible error in holding that the monthly statement was in compliance with the statutory requirements. Aldrich & Co. v. Ellis, 2002 MT 177, 311 M 1, 52 P3d 388 (2002).

Part 7
Montana Deferred Deposit Loan Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 1999.

Severability: Section 18, Ch. 404, L. 1999, was a severability clause.

Part Case Notes

Collection Agency — Collection of Bad Check Penalty Prohibited: The 2007 version of 31-1-704 exempted from the Montana Deferred Deposit Loan Act a collection agency that had entered into an agreement with a payday lender for the collection of claims owed or due. Because bad check penalties could never be owed or due to a payday lender pursuant to 31-1-722 (2007), the collection agency lost its exempt status when it pursued bad check penalties. Therefore, the District Court erred in allowing the collection agency to assess bad check penalties against the defendant's payday loan checks. The case was reversed and remanded to the District Court to determine whether the collection agency intentionally violated the Act under 31-1-722 (2007). Credit Serv. Co., Inc. v. Crasco, 2011 MT 211, 361 Mont. 487, 264 P.3d 1061.

Part Law Review Articles

Big Interest Rates Under the Big Sky: The Case for Payday and Title Lending Reform in Montana, Lundberg, 68 Mont. L. Rev. 181 (2007).

31-1-702. Purpose — rules — fees.

Compiler's Comments

2007 Amendment: Chapter 451 inserted (3) providing for deposit of fees. Amendment effective October 1, 2007.

Administrative Rules

ARM 2.59.1503 Unencumbered assets as additional surety.
ARM 2.59.1504 Ownership change in the deferred deposit lender.
ARM 2.59.1506 Procedural rules for hearings and discovery.
ARM 2.59.1507 Reports.

31-1-703. Definitions.

Compiler's Comments

2007 Amendment: Chapter 451 in definition of check after "drawn on a" inserted "state or federal" and after "bank" inserted "credit union, or savings and loan association"; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendments — Composite Section: Chapter 81 inserted definition of account; in definition of deferred deposit loan inserted (c) referring to accepting written authorization from a consumer to electronically deduct from the consumer's account; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 483 in definition of department substituted "department of administration" for "department of commerce". Amendment effective July 1, 2001.

Administrative Rules

ARM 2.59.1512 Electronic deductions.

Case Notes

Elements of Issuing Bad Checks Supportive of Information: The County Attorney filed an information against McWilliams for issuing bad checks in connection with a construction business. McWilliams asserted that the information should be dismissed because the series of transactions involving the checks were an illegal series of deferred deposit loans, so McWilliams could not be criminally prosecuted. However, 31-1-723, which prohibits deferred deposit loans, applies only to licensees under Title 31, ch. 1, part 7. None of the parties involved were licensees, so the statute did not apply. McWilliams also contended that the checks did not meet the definition of negotiable instruments in 30-3-104 because they were not payable on demand, but rather were in the nature of a future promise. However, the checks contained no restrictive endorsement, and although the parties to whom the checks were written agreed to refrain from cashing them immediately, the checks were in fact payable on demand and met the statutory definition. McWilliams also cited 45-2-211 in arguing a consent defense because the parties consented to take the checks and hold them, but that argument also failed because even though the parties agreed to hold the checks, they did not consent to nonpayment or to having McWilliams stop payment altogether. McWilliams next asserted that under St. v. Patterson, 75 M 315, 243 P 355 (1926), the information was defective because it contained no assertion of an intent to defraud. The statutory language under which Patterson was charged in 1926 required a showing of intent to defraud, but the current statute, 45-6-316, contains no intent to defraud element, so the information was not defective in that regard. There was sufficient evidence to charge McWilliams with issuing bad checks, and the District Court did not err in denying McWilliams' pretrial motion to dismiss the information. St. v. McWilliams, 2008 MT 59, 341 M 517, 178 P3d 121 (2008).

31-1-704. Scope.

Compiler's Comments

2009 Amendment: Chapter 81 deleted former (2)(b) that read: "a collection agency doing business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender"; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 163 deleted former (2)(a) that read: "(a) financial institutions as defined in 32-8-502"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 114 in (2)(c) substituted "doing business" for "licensed to do business". Amendment effective October 1, 2003.

Chapter 221 in (2)(a) substituted "financial institutions as defined in 32-8-502" for "banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 81 inserted (2)(c) exempting collection agencies collecting for deferred deposit lenders from the provisions of deferred deposit loan laws; and made minor changes in style. Amendment effective October 1, 2001.

31-1-705. License — application requirements — business locations.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 96 in (3) after "writing" deleted "under oath"; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 277 in (2) inserted second sentence concerning remittance of fees through nationwide licensing system; in (3) substituted "licensure must be in the form and submitted in the manner that the department directs" for "licensure must be in writing, under oath, and in the form prescribed by the department" and deleted former second sentence that read: "The application must contain:

(a) the name of the applicant;

(b) the date of formation if a business entity;

(c) the physical address of each deferred deposit loan office to be operated by the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) any other pertinent information that the department may require"; in (4) substituted current language concerning license year and expiration of licenses for former language that read: "A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is $250"; in (5) in first sentence after "location" inserted "at or from which deferred deposit loan transactions are conducted with consumers in this state" and in third sentence substituted "damages authorized under this part" for "damages and penalties" and inserted "and to pay civil penalties, restitution, and costs ordered by the department pursuant to 31-1-712 for any violation of this part"; in (6) in first sentence after "license" deleted "but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license" and inserted second sentence concerning licensure for separate place of business; and made minor changes in style. Amendment effective April 24, 2013.

2009 Amendment: Chapter 81 substituted (3) setting out application requirements for former (3) that read: "(3) (a) The department may not issue or renew a license unless findings are made that:

(i) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(ii) the applicant has unencumbered assets of at least $25,000 for each location;

(iii) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(iv) other information that the department considers necessary has been provided.

(b) The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings". Amendment effective October 1, 2009.

2007 Amendment: Chapter 451 in (1) inserted second sentence allowing a license to be granted to a person within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state; in (2) at end increased application fee from $375 to $500; and in (4) at end of second sentence increased license fee for any period less than 6 months from $187.50 to $250. Amendment effective October 1, 2007.

2005 Amendment: Chapter 119 inserted (3)(b) providing that the department may not issue license if there are findings of fraud or dishonest financial dealings; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 81 in (4) in first sentence after "year" deleted "and a renewal of a license may not be provided if the licensee has violated a provision of this part" and inserted second sentence requiring license year to be a calendar year and providing license fee for periods of less than 6 months; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 2.59.1503 Unencumbered assets as additional surety.

ARM 2.59.1504 Ownership change in the deferred deposit lender.

ARM 2.59.1510 Employees' character and fitness.

ARM 2.59.1515 Adoption of standardized forms and procedures of the nationwide multistate licensing system (NMLS).

ARM 2.59.1521 Reinstatement of expired licenses — deferred deposit loans.

31-1-706. License renewal fee.

Compiler's Comments

2013 Amendment: Chapter 277 in (1) substituted "pay an annual license renewal fee" for "pay, on or before December 1 of each year, a license renewal fee"; in (2) substituted current language concerning remittance of fees through nationwide licensing system for former language that read: "Failure to pay any yearly license renewal fee required by this section within the time prescribed will result in the automatic revocation of the license subject to renewal." Amendment effective April 24, 2013.

2007 Amendment: Chapter 451 in (1) near middle increased license renewal fee from $125 to $500. Amendment effective October 1, 2007.

Effective Date: This section is effective October 1, 2001.

Administrative Rules

ARM 2.59.1516 Deferred deposit lending — license renewals.

31-1-707. Denial of license and license renewal.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 96 deleted former (1)(a)(v) that read: "(v) the applicant has not provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default"; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 277 in (3) substituted "14 days" for "10 days". Amendment effective April 24, 2013.

Effective Date: This section is effective October 1, 2009.

31-1-710. Department authorized to participate in nationwide licensing system for purposes of licensing deferred deposit loan licensees — rulemaking.

Compiler's Comments

Effective Date: Section 9, Ch. 277, L. 2013, provided: "[This act] is effective on passage and approval." Approved April 24, 2013.

Administrative Rules

ARM 2.59.1515 Adoption of standardized forms and procedures of the nationwide multistate licensing system (NMLS).

ARM 2.59.1516 Deferred deposit lending — license renewals.

31-1-711. Examinations — fee.

Compiler's Comments

2009 Amendment: Chapter 81 in (2)(a) near middle after "amount of" substituted "$37.50 an hour" for "$300 a day". Amendment effective October 1, 2009.

2007 Amendment: Chapter 451 in (1) near beginning after "department" substituted "may conduct" for "shall conduct annually"; in (2)(a) near end after "conduct an" deleted "annual"; inserted (2)(b) allowing the department to charge a license fee for no more than three examinations a year; deleted former (4) that read: "(4) Completion of an annual examination must, in the absence of the department's finding just cause to revoke or suspend a license, constitute grounds for license renewal"; and made minor changes in style. Amendment effective October 1, 2007.

Administrative Rules

ARM 2.59.1505 Examination of deferred deposit lenders.

31-1-712. Notice of violation — administrative hearing — penalties — liability.

Compiler's Comments

2015 Amendment: Chapter 23 in (1) substituted current text concerning issuance of notice of alleged violation for former text that read: "The department shall provide a 14-day written notice that includes a statement of the alleged violation and provision for a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act. The notice must be based on a finding that any person, licensee, or officer, agent, employee, or representative, whether licensed or unlicensed, of the person or licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license"; inserted (2) concerning requirements for providing notice of alleged violations; in (3) before "the department may" inserted introductory clause concerning violation or misrepresentation and inserted last sentence concerning department remedies; deleted former (3) that read: "(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 277 in (1) in first sentence substituted "14-day written notice" for "10-day written notice of a proposed violation" and in third sentence after "violation" deleted "and not to exceed $5,000 for each administrative action"; inserted (2) concerning validity of loan made by unlicensed person; and made minor changes in style. Amendment effective April 24, 2013.

2007 Amendment: Chapter 451 in (1) at beginning of first sentence substituted "The department shall provide a 10-day written notice of a proposed violation that includes a statement of the alleged violation and provision for a hearing" for "If the department finds, after due notice and hearing", at beginning of second sentence inserted "The notice must be based on a finding", after "representative" inserted "whether licensed or unlicensed", after "of the" inserted "person or", and at end after "department" inserted "or has operated without a required license", in third sentence near beginning after "violation" inserted "and not to exceed $5,000 for each administrative action" and at end after "licensee" inserted "or to engage in the business of making deferred deposit loans", and inserted fourth sentence allowing the department to order restitution and reimbursement for the department's costs; inserted (2) concerning notice to the person or licensee; inserted (4) allowing reinstatement of a suspended or revoked license under certain circumstances; inserted (5) regarding deposit of civil penalties; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 221 in (1) near beginning before "licensee" inserted "any person", near middle after "department may" inserted "impose a civil penalty not to exceed $1,000 for each violation and may", and near end before "licensee" inserted "person or"; and made minor changes in style. Amendment effective July 1, 2003.

31-1-713. Department obligations — complaints.

Compiler's Comments

2015 Amendment: Chapter 23 in (2) after "person" deleted "who violates any provision of this part"; deleted former (2) that read: "(2) The department may hold hearings, subject to the contested case provisions of Title 2, chapter 4, part 6, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part"; inserted (3) concerning requests for an administrative hearing; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 277 in (1) in first sentence after "maintain" inserted "either directly or indirectly through a nationwide licensing system" and before "interested persons" inserted "and accessible by"; and made minor changes in style. Amendment effective April 24, 2013.

2007 Amendment: Chapter 451 in (2) near beginning after "hearings" inserted "subject to the contested case provisions of Title 2, chapter 4, part 6"; and made minor changes in style. Amendment effective October 1, 2007.

Administrative Rules

ARM 2.59.1506 Procedural rules for hearings and discovery.

31-1-714. Information and annual reports.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 96 deleted former (3) that read: "(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender"; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 277 in (2) substituted current language concerning a report for "Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings"; inserted (3) concerning a report; deleted former (3) (see Ch. 96 note); and made minor changes in style. Amendment effective April 24, 2013.

2007 Amendment: Chapter 451 in (1) near end of third sentence after "each" substituted "deferred deposit" for "consumer"; inserted (2)(c)(i) and (2)(c)(ii) requiring disclosure of the number of individual consumers with new deferred deposit loans; inserted (2)(d) requiring disclosure of the average deferred deposit loan amount, average annual interest percentage rate, and average deferred deposit loan term; inserted (2)(e) requiring disclosure of the number of deferred deposit loans rescinded; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 119 in (1) in third sentence near beginning decreased period for keeping records from 4 years to 2 years. Amendment effective October 1, 2005.

2001 Amendment: Chapter 81 inserted (2)(g) requiring the disclosure of certain information involving electronic transactions or deductions; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 2.59.1522 Adoption of annual reporting form and due date.

31-1-715. Loan requirements — right of rescission — arbitration — completion of transaction.

Compiler's Comments

2007 Amendment: Chapter 451 inserted (10) defining when a deferred deposit loan transaction is completed and activities allowed upon completion; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 210 inserted (5) concerning a consumer's rescission of a loan transaction; inserted (6) concerning mandatory arbitration clauses; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 81 inserted (5) providing that only licensee can make electronic deduction from consumer's account and requiring confidentiality on licensee's part; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 2.59.1514 Department approval of loan agreement form.

31-1-721. Required disclosures — loan agreement.

Compiler's Comments

2007 Amendment: Chapter 451 in (2)(c) substituted "all disclosures required by the federal Truth in Lending Act, 15 U.S.C. 1601, et seq." for "an itemization of the fees and interest charges to be paid by the consumer". Amendment effective October 1, 2007.

2003 Amendment: Chapter 221 inserted (2)(b) requiring that the written agreement between a licensee and consumer contain the name, address, and phone number of the consumer; and made minor changes in style. Amendment effective July 1, 2003.

Administrative Rules

ARM 2.59.1508 Schedule of charges.
ARM 2.59.1514 Department approval of loan agreement form.

31-1-722. Prohibited and permitted fees — attorney fees and costs.

Compiler's Comments

2010 Amendment by Initiative: Initiative Measure No. 164, proposed by initiative petition and approved at the general election held November 2, 2010, substituted (2) regarding fee limitations for "A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan."

Findings: Section 1, Initiative Measure No. 164, provided: "The people of Montana find that some lenders are charging Montanans over 400% interest annually, that excessive interest rates can lead Montana families into a debt trap of repeat borrowing, that the United States congress has enacted laws capping interest rates on loans to military families at 36% annually, and that responsible small loans are available at interest rates of 36% annually or less."

Effective Date: Section 9, Initiative Measure No. 164, provided: "[This act] applies to all transactions governed hereby entered into on or after January 1, 2011."

2009 Amendment: Chapter 81 in (3) at beginning of fourth sentence after "licensee" inserted "or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due"; and in (4) at beginning of fourth sentence after "licensee" inserted "or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due". Amendment effective October 1, 2009.

2003 Amendment: Chapter 221 in (3) at end of first sentence increased fee for insufficient funds check from $15 to $30 and inserted fourth sentence providing that a licensee may not collect damages for an insufficient funds check under 27-1-717(3); and in (4) at end of first sentence increased fee for an electronic deduction for which there are insufficient funds from $15 to $30 and inserted fourth sentence providing that a licensee may not collect damages under 27-1-717(3). Amendment effective July 1, 2003.

2001 Amendment: Chapter 81 in (2) after "25%" substituted "of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan" for "of the face amount of the check against which the delayed deposit loan is advanced"; inserted (4) pertaining to late fee requirements with respect to insufficient funds involving an electronic deduction; and made minor changes in style. Amendment effective October 1, 2001.

31-1-723. Prohibited acts.

Compiler's Comments

2007 Amendment: Chapter 451 in (13) at end after "loan" deleted "provided by the same licensee or any affiliate"; in (14) substituted "entering into a deferred deposit loan with a consumer who has an outstanding deferred deposit loan" for "making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of $300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 210 deleted former (20)(d) that read: "(d) a mandatory arbitration clause"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 81 inserted (4) referring to altering the date agreed upon for electronic deductions; inserted (5) pertaining to representations to financial institutions relating to electronic deductions; inserted (10) prohibiting charging to perform an electronic deduction or transaction; inserted (12) prohibiting use of a consumer's authorization for purposes other than collecting proceeds of loan; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 2.59.1513 Income verification.

ARM 2.59.1514 Department approval of loan agreement form.

Case Notes

Elements of Issuing Bad Checks Supportive of Information: The County Attorney filed an information against McWilliams for issuing bad checks in connection with a construction business. McWilliams asserted that the information should be dismissed because the series of transactions involving the checks were an illegal series of deferred deposit loans, so McWilliams could not be criminally prosecuted. However, 31-1-723, which prohibits deferred deposit loans, applies only to licensees under Title 31, ch. 1, part 7. None of the parties involved were licensees, so the statute did not apply. McWilliams also contended that the checks did not meet the definition of negotiable instruments in 30-3-104 because they were not payable on demand, but rather were in the nature of a future promise. However, the checks contained no restrictive endorsement, and although the parties to whom the checks were written agreed to refrain from cashing them immediately, the checks were in fact payable on demand and met the statutory definition. McWilliams also cited 45-2-211 in arguing a consent defense because the parties consented to take the checks and hold them, but that argument also failed because even though the parties agreed to hold the checks, they did not consent to nonpayment or to having McWilliams stop payment altogether. McWilliams next asserted that under St. v. Patterson, 75 M 315, 243 P 355 (1926), the information was defective because it contained no assertion of an intent to defraud. The statutory language under which Patterson was charged in 1926 required a showing of intent to defraud, but the current statute, 45-6-316, contains no intent to defraud element, so the information was not defective in that regard. There was sufficient evidence to charge McWilliams with issuing bad checks, and the District Court did not err in denying McWilliams' pretrial motion to dismiss the information. St. v. McWilliams, 2008 MT 59, 341 M 517, 178 P3d 121 (2008).

31-1-724. Civil remedies.

Compiler's Comments

2003 Amendment: Chapter 221 in (2) near beginning before "violation" inserted "intentional"; and in (3) near beginning before "violated" inserted "intentionally". Amendment effective July 1, 2003.

31-1-726. Investigations by department — subpoenas — oaths — examination of witnesses and evidence.

Compiler's Comments

2021 Amendment: Chapter 535 in (3) after "judge of the district court" substituted "in the county in which the licensed premises or the person's principal place of business is located or where the person resides may" for "of Lewis and Clark County or the county in which the licensed premises are located may". Amendment effective October 1, 2021.

Effective Date: This section is effective October 1, 2007.

31-1-727. Cease and desist orders.

Compiler's Comments

2015 Amendment: Chapter 23 in (1) at beginning of first sentence substituted "If the department determines" for "If it appears to the department", at end of first sentence substituted "after issuance and service of a notice as provided in 31-1-712" for "after reasonable notice and opportunity for a hearing", and in last sentence substituted "part" for "chapter"; in (2) in two places substituted "14 days" for "10 days"; in (2)(b) substituted "issued and served as provided in 31-1-712" for "addressed" and substituted "after the date on which the notice was sent by certified mail" for "after receipt of the notice"; and made minor changes in style. Amendment effective October 1, 2015.

Effective Date: This section is effective October 1, 2007.

31-1-728. Injunctions — receivers.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

31-1-729. Violation of specified federal laws — rulemaking authority.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

CHAPTER 2
DEBTOR AND CREDITOR RELATIONSHIPS

Chapter Law Review Articles

What Can Bankruptcy Law Tell Us About Article III and Vice Versa?, Kar, 60 Mont. L. Rev. 415 (1999).

Creditors' Considerations Under Chapters 11 and 12 of the Bankruptcy Code, Mickelson, 50 Mont. L. Rev. 313 (1989).

The Montana Family Farmer Under Chapter 12 Bankruptcy, Tremper, 49 Mont. L. Rev. 40 (1988).

Part 1
General Provisions — Definitions

Part Case Notes

Scrivener's Error — Lien Perfected — Bankruptcy: The plaintiffs paid off one of two loans with deeds of trust, but due to a scrivener's error the wrong lien payoff was recorded. Subsequently recorded instruments corrected the mistake, but the plaintiffs argued that when they entered bankruptcy the scrivener's error invalidated the underlying trust indenture and corresponding lien. Because a lien stays with the property until the debt is paid in full or until foreclosure proceedings are complete, the scrivener's error did not invalidate or discharge the underlying lien, and it survived the plaintiffs' bankruptcy proceedings. Reeves v. U.S. Bank Nat'l Ass'n, 2017 MT 70, 387 Mont. 138, 391 P.3d 742, following Dewsnup v. Timm, 502 U.S. 410 (1992).

Common-Law Right to Setoff Clarified: The right of setoff exists between any mutual debtors and creditors where the debts have matured and the parties mutually are debtors and creditors of and to each other. It is a general rule that when a depositor is indebted to a bank and the debts are mutual, the bank may apply deposits to a payment of the debt due it by the depositor, provided there is no express agreement to the contrary and the deposit is not specifically applicable to some other purpose. For a bank to establish the right to setoff, the fund to be set off must be owed by the bank to the debtor, the fund must be deposited without restrictions, and the existing indebtedness must be due and owing. Victor Werlhof Aviation Ins. v. Farmers St. Bank, 237 M 51, 771 P2d 962, 46 St. Rep. 613 (1989). See also Sec. St. Bank v. First Nat'l Bank, 78 M 389, 254 P 417 (1927).

Account Stated — What Constitutes: The basic ingredients of an account stated are an agreement that the items of the account and the balance struck are correct and an express or implied agreement for the payment of the balance. Implied agreement for the payment of the balance may be presumed where there are a course of dealings, an antecedent indebtedness, and retention of a statement of the account for an unreasonable length of time without objection. Johnson v. Tindall, 195 M 165, 635 P2d 266 (1981), followed in Mattson v. Julian, 209 M 48, 678 P2d 654, 41 St. Rep. 544 (1984), and in Able, Inc. v. Kuzara, 241 M 155, 785 P2d 1021, 47 St. Rep. 158 (1990).

Criminal Liability — Intentional Breach of Fiduciary Duty: Defendant entered a lease agreement with Town Pump, Incorporated to operate a gas station. Defendant was required to make daily deposits to Town Pump's bank account as payment for gasoline sold. A gasoline audit revealed defendant had failed to deposit $6,377 of proceeds due Town Pump. Defendant contended that a debtor-creditor relationship existed and that he only had a contractual duty to repay the debt, and that a breach of this civil obligation could not be the basis for criminal liability. The evidence showed Town Pump entrusted defendant with the gasoline it supplied with the understanding that its share of sale proceeds would be deposited to its account. The jury was presented with the factual question of when title to the gasoline passed. The jury concluded title did not pass upon delivery. Through the course of dealing in the months preceding the audit, defendant demonstrated his understanding of the entrustment and his responsibility. The deviation from this recognized fiduciary duty when he falsified accounting reports to the company clearly indicated an intent to purposely deprive Town Pump of its proceeds. The deliberate attempt to conceal retention of the proceeds is inconsistent with an ordinary debtor-creditor relationship. There was nothing in the record to show the parties' intent to create a debtor-creditor relationship. Defendant could not avoid criminal liability for taking money entrusted to him by calling it a loan. St. v. Frederick, 208 M 112, 676 P2d 213, 41 St. Rep. 207 (1984).

31-2-101. Debtor defined.

Case Notes

State as Debtor: The State may not be a debtor under this section as the definition of debtor in this section is not generalized. First Nat'l Bank v. Sourdough Land & Cattle Co., 171 M 390, 558 P2d 654 (1976).

31-2-102. Creditor defined.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-103. Contracts of debtor are valid.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-104. Payments in preference.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

No Breach of Duty to Company by Repayment of Loans to Members Before Payment of Company Debts: On the morning of a concert sponsored by plaintiff company, several members loaned money to the company to pay the bands so the concert could proceed. After the concert, the members' loans were repaid from concert proceeds rather than paying a company debt to a bank, ultimately leaving the company insolvent. Some members of the company contended that this act constituted an unlawful distribution of company assets and that the members who authorized the loan repayments were personally liable to the company for the amounts that they caused to be paid to themselves. The District Court granted summary judgment to defendants, and on appeal, the Supreme Court affirmed. Under 35-8-604, a company may not make distributions to members if the distributions render the company unable to pay its debts, which includes a repayment of capital contributions that a member made to the company. However, in this case, the amounts advanced to the company to salvage the concert were personal loans made in the ordinary course of company business, and 35-8-504 allows a company to reimburse members for money loaned to the company, so the company had both the obligation and the right to repay the members' loans. The company had more legitimate debt than it could pay, and the decision to repay the members' loans was simply a business decision. Even though the members who authorized the payment were acting in a managerial position, they were not liable for making a legitimate business decision to pay one creditor in preference to another. Lynes v. Helm, 2007 MT 226, 339 M 120, 168 P3d 651 (2007).

Finding of Fraudulent Conveyance Rather Than Payment in Preference Affirmed: Plaintiffs who leased mineral rights to a peat extraction operation from Foss obtained a $118,343.59 default judgment against Foss for intentional interference with access to the peat resources and for assault on one of the plaintiffs with a rifle. Foss conveyed his 44% interest in the property to his then-wife Fedder for $1, which gave her an 88% interest, and Foss's children from a previous marriage held the remaining 12% interest. Their marriage was subsequently dissolved. The District Court held that the property conveyance was fraudulent and allowed plaintiffs to levy execution upon the property. Fedder maintained on appeal that the transfer of title to her was in effect a payment in preference, allowable under this section, that was made in recognition that she would be entitled to maintenance or support from Foss when they dissolved their marriage. However, Fedder produced no evidence that she was a creditor of Foss at the time of the conveyance. The marriage was intact at the time of the conveyance, and the property transfer was not part of the dissolution, but rather preceded it. The District Court's decision was affirmed. Farmers Plant Aid, Inc. v. Fedder, 2000 MT 87, 299 M 206, 999 P2d 315, 57 St. Rep. 375 (2000).

Prosecution of Fraudulent Conveyance Action After Filing of Bankruptcy Petition Proper: Plaintiffs who leased mineral rights to a peat extraction operation from Foss obtained a $118,343.59 default judgment against Foss for intentional interference with access to the peat resources and for assault on one of the plaintiffs with a rifle in 1989. Foss transferred his 44% interest in the property to his then-wife Fedder for $1, which gave her an 88% interest, and Foss's children from a previous marriage held the remaining 12% interest. The marriage was subsequently dissolved, and Foss filed a bankruptcy petition in 1994, listing numerous creditors and no assets. Foss was dropped as a defendant, and plaintiffs pursued a fraudulent conveyance action against Fedder to collect on their judgment. The District Court voided the conveyance from Foss to Fedder, and granted defendants the right to levy execution upon the property. Fedder appealed, asserting that when Foss filed the bankruptcy petition, the bankruptcy trustee acquired the right to avoid prepetition fraudulent conveyances and that plaintiffs thus lost their standing to pursue their claim. The Supreme Court noted that section 524(e) of the Bankruptcy Code provides that discharge of a debt does not affect the liability of any other entity for the debt. After the close of a bankruptcy, creditors are free to resume or commence a fraudulent conveyance action against the transferee in state court independent of the bankruptcy trustee, even when collection efforts may have occurred during pendency of the bankruptcy. Here, the trustee was appointed after this action was filed, and the Bankruptcy Court and the trustee had notice of the action during pendency of the bankruptcy, so the District Court did not err in granting the fraudulent conveyance judgment after conclusion of the bankruptcy proceedings. Further, pursuant to Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P2d 703 (1962), plaintiffs were not required to obtain a lien prior to bringing the fraudulent conveyance claim. Nothing mandates that a plaintiff file a proof of claim in Bankruptcy Court to preserve the right to pursue a fraudulent conveyance action against a third party transferee like Fedder. Farmers Plant Aid, Inc. v. Fedder, 2000 MT 87, 299 M 206, 999 P2d 315, 57 St. Rep. 375 (2000). See also Fed. Deposit Ins. Corp. v. Davis, 733 F2d 1083 (4th Cir. 1984), and Kathy B. Enterprises, Inc. v. U.S., 779 F2d 1413 (9th Cir. 1986).

Contingent Liability: Debtor's sale of property to pay all creditors except one did not violate this statute in light of fact that the excepted debt was contingent liability which the debtor could reasonably anticipate would not become due and owing. White v. Nollmeyer, 151 M 387, 443 P2d 873 (1968).

Application of Section:

Under this section an insolvent debtor may prefer one creditor to another; the preference may be made by conveyance of property, real or personal, either directly to the creditor or to a third person for the creditor's benefit, and, if made, the property is not subject to seizure under legal process. Costello v. Shields, 99 M 335, 43 P2d 879 (1935), followed in Pioneer Minerals Corp. v. Larabie Bros. Bankers, Inc., 99 M 358, 43 P2d 884 (1935).

The rule declared by this section and 31-2-207 that a debtor may pay one creditor in preference to another, provided that the other is not a preferred creditor, applies to an insolvent debtor as well as to a solvent one. Dept. of Agriculture, Labor and Industry v. DeVore, 91 M 47, 6 P2d 125 (1931); Hale v. Belgrade Co., Ltd., 75 M 99, 242 P 425 (1925).

If the provision of this section that a debtor may pay or secure one creditor in preference to another has any relation to cases of insolvency, it is limited by the rule stated in 31-2-207. Aetna Accident & Liab. Co. v. Miller, 54 M 377, 170 P 760 (1918).

Transfer of Property in Excess of Debt: When a debtor transfers to one creditor value greatly exceeding the amount due, it is a badge of fraud affording strong evidence thereof. Godfrey L. Cabot, Inc. v. Gas Prod. Co., 93 M 497, 19 P2d 878 (1933); Sec. St. Bank v. McIntyre, 71 M 186, 228 P 618 (1924).

Form of Preference Immaterial: In the absence of a positive statutory provision declaring otherwise, if a preference given by a debtor to his creditor is in other particulars unobjectionable, the form of the transaction by which it is made is immaterial. Dept. of Agriculture, Labor & Industry v. DeVore, 91 M 47, 6 P2d 125 (1931).

Transfers by Husband to Wife: An alleged fraudulent transfer of property by a husband to his wife should be closely scrutinized on account of the opportunities afforded by the relation, but a husband honestly indebted to his wife may give her a valid preference. Harrison v. Riddell, 64 M 466, 210 P 460 (1922).

31-2-105. Relative rights of different creditors.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Injustice Considered: A contractor was awarded a judgment for work performed in building a road. The supplier of equipment to the contractor filed a mechanics' lien (now construction lien) and the judgment debtors posted a bond in lieu of the supplier's lien. The District Court allowed the supplier to receive funds from the judgment fund pursuant to an assignment by the contractor rather than from the mechanics' lien (now construction lien) bond. The Supreme Court upheld this decision because otherwise the judgment debtors would have been required to make double payment for the use of the equipment, first to the contractor through the judgment fund and then to the supplier through the bond fund. Witbart v. Witbart, 204 M 446, 666 P2d 1217, 40 St. Rep. 995 (1983).

31-2-106. Exempt property — bankruptcy proceeding.

Compiler's Comments

2017 Amendment: Chapter 298 inserted (2) concerning medical care, health, and medical savings accounts; and made minor changes in style. Amendment effective October 1, 2017.

2009 Amendment: Chapter 2 in (3)(c) near end after "401(a)" inserted "403(a)"; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 114 in (3)(c) after "Internal Revenue Code" deleted "of 1954" and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendments: Chapter 238 in (1) deleted reference to 35-10-502; and made minor changes in style.

Chapter 265 in (1) deleted references to 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, and 19-13-1004; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

1991 Amendment: Near middle of (1), after "part 6", substituted "33-7-522" for "33-7-511". Amendment effective January 1, 1992.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

1989 Amendments: Chapter 45 in (1) inserted reference to 19-21-212. Amendment effective March 6, 1989.

Chapter 301 at end of introductory clause substituted "An individual may exempt from the property of the estate in any bankruptcy proceeding" for "except that property specified in 11 U.S.C. 522(d)(10) and"; inserted (2) regarding the right to unemployment compensation and benefits; inserted (3) relating to the right to receive benefits from certain plans or contracts; and made minor changes in punctuation. Amendment effective March 24, 1989.

Applicability: Section 3, Ch. 45, L. 1989, provided: "This act applies to bankruptcy petitions in which discharge takes place on or after [the effective date of this act]." Effective March 6, 1989.

Effective Date — Applicability: Section 4, Ch. 301, L. 1989, provided: "[This act] is effective on passage and approval and applies to bankruptcy petitions in which discharge takes place on or after [the effective date of this act]." Approved March 24, 1989.

1987 Amendment: Substituted present section (see 1987 Session Law for text) for former section that read: "No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d) except property exempt from execution of judgment as provided in Title 25, chapter 13, part 6."

Case Notes

Bankruptcy Exemption for Health Savings Accounts — Recent Legislation: The Bankruptcy Court sent a certified question to the Supreme Court asking whether a debtor may claim an exemption in a health savings account pursuant to 25-13-608. The Supreme Court held that

Montana applies a principle of liberal construction as it relates to bankruptcy exemptions, that the nature of a health savings account qualified as a benefit under 25-13-608, that the statute explicitly provided that medical, surgical, or hospital benefits are exempt, and that certain funds in a health savings account are exempt. The court then noted that the Montana Legislature subsequently exempted certain health or medical savings accounts through Ch. 298, L. 2017, consistent with their opinion. In re Giacometto, 2017 MT 162, 388 Mont. 82, 397 P.3d 1264.

Montana Debtor May Claim Exemption for One Gun in Addition to Statutory Exemptions: On a certified question from the U.S. Bankruptcy Court, the Supreme Court held that the plain language of 25-13-613(1)(b) allows a Montana debtor to claim an exemption for one gun in addition to the exemption allowed and claimed for firearms, within monetary limits, allowed under 25-13-609(1). In re Maynard, 2006 MT 162, 332 M 485, 139 P3d 803 (2006), distinguishing Dept. of Revenue v. Puget Sound Power & Light Co., 179 M 255, 587 P2d 1282 (1978).

Joint Bankruptcy Debtors Allowed to Claim Separate Exemption of Interest in Jointly Owned Personal Property: Three married couples filed similar joint bankruptcy petitions wherein each spouse claimed a separate set of personal property exemptions pursuant to 25-13-609. The bankruptcy trustee objected to the claimed objections in each case, contending that joint debtors were limited to a single set of exemptions. The U.S. Bankruptcy Court certified the question to the Montana Supreme Court. The court held that the specific provisions of this section control over the general personal property exemptions available to judgment debtors in 25-13-609. This section allows each individual to claim the allowable exemptions in any bankruptcy proceeding. Because each joint debtor maintains an interest in jointly held personal property, each may claim a separate exemption of personal interest in that property, essentially stacking the two exemptions in one item of personal property. However, in cases when the personal property is owned solely by one of the joint debtors, only the debtor with the ownership interest may claim an exemption for that property. In re Zimmermann, Landon, & Maly, 2002 MT 90, 309 M 337, 46 P3d 599 (2002).

Prosecution of Fraudulent Conveyance Action After Filing of Bankruptcy Petition Proper: Plaintiffs who leased mineral rights to a peat extraction operation from Foss obtained a $118,343.59 default judgment against Foss for intentional interference with access to the peat resources and for assault on one of the plaintiffs with a rifle in 1989. Foss transferred his 44% interest in the property to his then-wife Fedder for $1, which gave her an 88% interest, and Foss's children from a previous marriage held the remaining 12% interest. The marriage was subsequently dissolved, and Foss filed a bankruptcy petition in 1994, listing numerous creditors and no assets. Foss was dropped as a defendant, and plaintiffs pursued a fraudulent conveyance action against Fedder to collect on their judgment. The District Court voided the conveyance from Foss to Fedder, and granted defendants the right to levy execution upon the property. Fedder appealed, asserting that when Foss filed the bankruptcy petition, the bankruptcy trustee acquired the right to avoid prepetition fraudulent conveyances and that plaintiffs thus lost their standing to pursue their claim. The Supreme Court noted that section 524(e) of the Bankruptcy Code provides that discharge of a debt does not affect the liability of any other entity for the debt. After the close of a bankruptcy, creditors are free to resume or commence a fraudulent conveyance action against the transferee in state court independent of the bankruptcy trustee, even when collection efforts may have occurred during pendency of the bankruptcy. Here, the trustee was appointed after this action was filed, and the Bankruptcy Court and the trustee had notice of the action during pendency of the bankruptcy, so the District Court did not err in granting the fraudulent conveyance judgment after conclusion of the bankruptcy proceedings. Further, pursuant to Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P2d 703 (1962), plaintiffs were not required to obtain a lien prior to bringing the fraudulent conveyance claim. Nothing mandates that a plaintiff file a proof of claim in Bankruptcy Court to preserve the right to pursue a fraudulent conveyance action against a third party transferee like Fedder. Farmers Plant Aid, Inc. v. Fedder, 2000 MT 87, 299 M 206, 999 P2d 315, 57 St. Rep. 375 (2000). See also Fed. Deposit Ins. Corp. v. Davis, 733 F2d 1083 (4th Cir. 1984), and Kathy B. Enterprises, Inc. v. U.S., 779 F2d 1413 (9th Cir. 1986).

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana). (Chapter 208, L. 1987, provided that property exempt from execution pursuant to 19-3-105 (renumbered 19-2-1004) may be exempt in a bankruptcy proceeding.)

Workers' Compensation — No Bankruptcy Exemption: Workers' compensation benefits are not exempt from federal bankruptcy. 42 St. Rep. 2043 (U.S. Bankruptcy Court for the District of Montana; order of Dec. 26, 1985). (Chapter 208, L. 1987, provided that property exempt from execution pursuant to 39-71-743 and 39-73-110 may be exempt in a bankruptcy proceeding.)

Effect of Section — Opt Out of Federal Exemptions: This section, authorized by the Bankruptcy Reform Act of 1978, 11 U.S.C. 522(b)(1), opts Montana out of federal bankruptcy exemptions; thus, whether a truck equipped with a mobile crane used to repair heavy equipment in the bankruptcy debtor's trade or business is exempt must be decided under Montana law. In re Gehnert, 40 St. Rep. 1894 (1983) (apparently not reported in Bankruptcy Reporter).

Law Review Articles

Exemption Stacking in Montana Bankruptcies—"Windfall" or "Fresh Start"?, Peterson, 64 Mont. L. Rev. 543 (2003).

Part 2

Assignments for Benefit of Creditors

Part Case Notes

Loans Repayable From Share of Judgment Award: Nyquist made seven loans to Preston, each of which was separately assigned by Preston to be repaid from his proceeds from a judgment award. Given the specific assignments, the District Court properly determined that the loans were to be repaid from Preston's individual share of the judgment award, rather than from the corporation's share of the award. Nyquist v. Nyquist, 255 M 149, 841 P2d 515, 49 St. Rep. 927 (1992).

Common-Law Assignment: A common-law assignment for the benefit of creditors is valid as to the assignor and consenting creditors, even though state insolvency laws have not been complied with. The assignment is void only as to any nonconsenting creditors, purchasers, and encumbrancers in good faith and for value. Galbraith v. Kline, 7 F2d 682 (1925).

Purpose of Statute: The provisions of this part merely regulate common-law assignments for the benefit of creditors. Babcock v. Maxwell, 21 M 507, 54 P 943 (1898).

31-2-201. When debtor may execute assignment.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Differentiation Between Composition and Assignment for Benefit of Creditors: The distinction between an assignment for the benefit of creditors and a composition with creditors is that the latter requires the assent of the creditors, while the former does not. Pioneer Minerals Corp. v. Larabie Bros. Bankers, 99 M 358, 43 P2d 884 (1935).

Suit Against Assignee:

Under this part, whereby a complete procedure for the administration and settlement of estates assigned for the benefit of creditors is provided, the District Court of the county in which an assignment is made has exclusive jurisdiction, both in cases at law and in equity, arising out of the assignment and relating to the distribution of the assets of the estate. Stanton Trust & Sav. Bank v. N. Mont. Ass'n of Credit Men, 77 M 153, 250 P 596 (1926). See also Patrick & Co. v. McDonnell, 61 M 236, 201 P 1009 (1921).

One who has been appointed by the court the successor of an assignee of an insolvent may be sued without leave of court. Babcock v. Maxwell, 21 M 507, 54 P 943 (1898).

Common-Law Rule Still Exists: The rule of common law still exists under this section and 31-2-202 through 31-2-220 to the effect that the execution of an assignment for the benefit of creditors is no bar to an action by a creditor against the assignor, and does not affect the right of the creditor to proceed to judgment after the assignment is made. Acme Harvesting Mach. Co. v. Benedict, 58 M 110, 190 P 287 (1920).

Assignee Not a Receiver: Neither an original assignee nor his successor, as such, is a receiver. Babcock v. Maxwell, 21 M 507, 54 P 943 (1898). See Aetna Accident & Liab. Co. v. Miller, 54 M 377, 170 P 760 (1918).

31-2-202. Insolvency — what constitutes.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

Two Meanings of Insolvency: "Insolvency" has two meanings. In its proper sense, it signifies that condition of a person whose entire assets are insufficient to pay his debts in full. In a restricted sense, the term is used to express the present inability of one to pay his current obligations as they mature, in the usual course of business. It is in this latter sense that the term is used when applied to banks. Stadler v. First Nat'l Bank, 22 M 190, 56 P 111 (1899).

31-2-203. Certain transfers not affected.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-204. What debts may be secured.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-205. Preference given for wages.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Application of Section:

This section deals with insolvency proceedings and into them injects an automatic preference in favor of wage claims to an amount not exceeding $200 each (restriction deleted by amendment). At most this could amount to nothing more than an assent by the State to share its preference in such cases with such claims. Aetna Accident & Liab. Co. v. Miller, 54 M 377, 170 P 760 (1918).

When there is no evidence in the record and the findings of the court bring the plaintiff within the operation of this section, a judgment for plaintiff against an assignee for the benefit of creditors will be affirmed on the authority of Flanders v. Murphy, 10 M 398, 25 P 1052 (1891), and Marshall v. Livingston Nat'l Bank, 11 M 351, 28 P 312 (1891). Knatz v. Wise, 16 M 555, 41 P 710 (1895).

Assignment to Creditor for His Sole Benefit: It is no objection to a complaint in an action by a laborer to enforce his claim that it alleges an assignment to a creditor directly for his sole benefit, and not as a trustee or for the benefit of creditors. Marshall v. Livingston Nat'l Bank, 11 M 351, 28 P 312 (1891); Flanders v. Murphy, 10 M 398, 25 P 1052 (1891).

Chattel Mortgage as Assignment: The effect of an instrument conveying personal property was a transfer of a debtor's property to a creditor, with power to make an immediate sale of the same and render the surplusage, after satisfying the debt therein described, to the debtor, which debt was made to be due at once. The transaction, though under the name and in the form of a chattel mortgage, will be regarded as an assignment, and within the operation of a statute making the wages of an employee of the assignor a preferred claim when the services were rendered within 60 days (now 4 months) immediately preceding such assignment. Marshall v. Livingston Nat'l Bank, 11 M 351, 28 P 312 (1891).

31-2-207. Certain rights not affected by preferences in assignment.

Case Notes

Tax Collections: The state is not bound by the general language of a statute which tends to restrain or to diminish its powers, rights, or interest. Its right to a preference claim on a fund collected as taxes and held by a bank cannot, as against general creditors of the bank, be defeated. Aetna Accident & Liab. Co. v. Miller, 54 M 377, 170 P 760 (1918).

31-2-209. Assignment — when void.

Compiler's Comments

2013 Amendment: Chapter 264 deleted former (7) that read: "(7) if the assignment violates 72-34-105." Amendment effective October 1, 2013.

Severability: Section 161, Ch. 264, L. 2013, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: At end of (7) substituted "72-34-105" for "72-20-203(1)".

31-2-210. The instrument of assignment.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-212. Assignee takes subject to rights of third parties.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

Attack of Previous Transfer: An assignee for the benefit of creditors cannot attack a previous transfer by the assignor as in fraud of creditors. Babcock v. Maxwell, 29 M 31, 74 P 64 (1903).

Pledged Property: An assignee for the benefit of creditors, to whom is assigned the title to stock pledged by the assignor, notice of the assignment being given to the pledgee, stands in the shoes of his assignor insofar as his rights as a pledgor are concerned. Such assignee in making a sale for cash may set aside a sale to one who could pay only a small part of the amount bid, and may resell the property on a smaller cash bid. Such assignee may redeem property pledged by the assignor. Durfee v. Harper, 22 M 354, 56 P 582 (1899).

31-2-214. Verification of inventory — when assignee required to file — inspection of assignor's books and papers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-215. Recording assignment and filing inventory.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-220. Management, disposal, and conversion of estate.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-221. Notice to creditors to present claims.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Time for Presentation of Claims: The rule that a claim is barred if not timely presented within statutory time period is applicable in principle when, as in this section, the District Judge may fix the time for such presentation. State ex rel. Marshall-Wells Co. v. District Court, 74 M 34, 237 P 523 (1925).

31-2-224. Power of court.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Assignee — Responsibility to Court — Duties and Restrictions: The assignee acts as a fiduciary for the creditors under the control and direction of the District Court, with this part restricting his activity. The District Court must be advised of the details of a sale of the assets of an insolvent business, and investigate the propriety thereof. Where the District Court is not advised of the existence of unlisted property when approving a sale, there is no approval and therefore the matter will be reopened. In re Halvorson Mercantile Co., 112 M 563, 118 P2d 1047 (1941).

Allowance of Claims: Under this section, construed in conjunction with 31-2-221, the District Court has power upon final settlement of the estate to direct the assignee to pay a lawful creditor his proportionate dividend though his claim was not presented within the time designated in the assignee's call, provided 4 months have not elapsed since the first publication of notice to creditors. State ex rel. Marshall-Wells Co. v. District Court, 74 M 34, 237 P 523 (1925).

31-2-225. When further security required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-2-229. Assignees protected for acts done in good faith.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3

Uniform Fraudulent Transfer Act

Part Commissioners' Prefatory Note

The Uniform Fraudulent Conveyance Act was promulgated by the Conference of Commissioners on Uniform State Laws in 1918. The Act has been adopted in 25 jurisdictions, including the Virgin Islands. It has also been adopted in the sections of the Bankruptcy Act of 1938 and the Bankruptcy Reform Act of 1978 that deal with fraudulent transfers and obligations.

The Uniform Act was a codification of the "better" decisions applying the Statute of 13 Elizabeth. See Analysis of H.R. 12339, 74th Cong., 2d Sess. 213 (1936). The English statute was enacted in some form in many states, but, whether or not so enacted, the voidability of fraudulent transfer was part of the law of every American jurisdiction. Since the intent to hinder, delay, or defraud creditors is seldom susceptible of direct proof, courts have relied on badges of fraud. The weight given these badges varied greatly from jurisdiction, and the Conference sought to minimize or eliminate the diversity by providing that proof of certain fact combinations would conclusively establish fraud. In the absence of evidence of the existence of such facts, proof of a fraudulent transfer was to depend on the evidence of actual intent. An important reform effected by the Uniform Act was the elimination of any requirement that a creditor have obtained a judgment or execution returned unsatisfied before bringing an action to avoid a transfer as fraudulent. See American Surety Co. v. Conner, 251 N.Y. 1, 166 N.E. 783, 67 A.L.R. 244 (1929) (per C.J. Cardozo).

The Conference was persuaded in 1979 to appoint a committee to undertake a study of the Uniform Act with a view to preparing the draft of a revision. The Conference was influenced by the following considerations:

(1) The Bankruptcy Reform Act of 1978 has made numerous changes in the section of that Act dealing with fraudulent transfers and obligations, thereby substantially reducing the correspondence of the provisions of the federal bankruptcy law on fraudulent transfers with the Uniform Act.

(2) The Committee on Corporate Laws of the Section of Corporations, Banking & Business Law of the American Bar Association, engaged in revising the Model Corporation Act, suggested that the Conference review provisions of the Uniform Act with a view to determining whether the Acts are consistent in respect to the treatment of dividend distributions.

(3) The Uniform Commercial Code, enacted at least in part by all 50 states, had substantially modified related rules of law regulating transfers of personal property, notably by facilitating the making and perfection of security transfers against attack by unsecured creditors.

(4) Debtors and trustees in a number of cases have avoided foreclosure of security interests by invoking the fraudulent transfer section of the Bankruptcy Reform Act.

(5) The Model Rules of Professional Conduct adopted by the House of Delegates of the American Bar Association on August 2, 1983, forbid a lawyer to counsel or to assist a client in conduct that the lawyer knows is fraudulent.

The Drafting Committee appointed by the Conference held its first meeting in January of 1983. A first reading of a draft of the revision of the Uniform Fraudulent Conveyance Act was had at the Conference's meeting in Boca Raton, Florida, on July 27, 1983. The Committee held four meetings in addition to a meeting held in connection with the Conference meeting in Boca Raton. Meetings were also attended by the following representatives of interested organizations:

Robert Rosenberg, Esq., of the American Bar Association;

Richard Cherin, Esq., of the Commercial Financial Services Committee of the Corporation, Banking and Business Law Section of the American Bar Association;

Robert Zinman, Esq., of the American College of Real Estate Lawyers;

Bruce Bernstein, Esq., of the National Commercial Finance Association;

Ernest E. Specks, Esq., of the Real Property, Probate and Trust Law Section of the American Bar Association.

The Committee determined to rename the Act the Uniform Fraudulent Transfer Act in recognition of its applicability to transfers of personal property as well as real property, "conveyance" having a connotation restricting it to a transfer of personal property. As noted in Comment (2) accompanying § 1(2) [31-2-328(2)] and Comment (8) accompanying § 4 [31-2-333], however, this Act, like the original Uniform Act, does not purport to cover the whole law of voidable transfers and obligations. The limited scope of the original Act did not impair its effectiveness in achieving uniformity in the areas covered. See McLaughlin, Application of the Uniform Fraudulent Conveyance Act, 46 Harv.L.Rev. 404, 405 (1933).

The basic structure and approach of the Uniform Fraudulent Conveyance Act are preserved in the Uniform Fraudulent Transfer Act. There are two section in the new Act delineating what transfers and obligations are fraudulent. Section 4(a) [31-2-333(1)] is an adaptation of three sections of the U.F.C.A.; § 5(a) [31-2-334(1)] is an adaptation of another section of the U.F.C.A.; and § 5(b) [31-2-334(2)] is new. One section of the U.F.C.A. (§ 8) [31-2-317, now repealed] is not carried forward into the new Act because deemed to be redundant in part and in part susceptible of inequitable application. Both Acts declare a transfer made or an obligation incurred with actual intent to hinder, delay, or defraud creditors to be fraudulent. Both Acts render a transfer made or obligation incurred without adequate consideration to be constructively fraudulent—i.e., without regard to the actual intent of the parties—under one of the following conditions:

(1) the debtor was left by the transfer or obligation with unreasonably small assets for a transaction or the business in which he was engaged;

(2) the debtor intended to incur, or believed that he would incur, more debts than he would be able to pay; or

(3) the debtor was insolvent at the time or as a result of the transfer or obligation.

As under the original Uniform Fraudulent Conveyance Act a transfer or obligation that is constructively fraudulent because insolvency concurs with or follows failure to receive adequate consideration is voidable only by a creditor in existence at the time the transfer occurs or the obligation is incurred. Either an existing or subsequent creditor may avoid a transfer or obligation for inadequate consideration when accompanied by the financial condition specified in § 4(a)(2)(i) [31-2-333(1)(a)(i)] or the mental state specified in § 4(a)(2)(ii) [31-2-333(1)(a)(ii)].

Reasonably equivalent value is required in order to constitute adequate consideration under the revised Act. The revision follows the Bankruptcy Code in eliminating good faith on the part of the transferee or obligee as an issue in the determination of whether adequate consideration is given by a transferee or obligee. The new Act, like the Bankruptcy Act, allows the transferee or obligee to show good faith in defense after a creditor establishes that a fraudulent transfer has been made or a fraudulent obligation has been incurred. Thus a showing by a defendant that a reasonable equivalent has been has been given in good faith for a transfer or obligation is a complete defense although the debtor is shown to have intended to hinder, delay, or defraud creditors.

A good faith transferee or obligee who has given less than a reasonable equivalent is nevertheless allowed a reduction in a liability to the extent of the value given. The new Act, like the Bankruptcy Code, eliminates the provision of the Uniform Fraudulent Conveyance Act that enables a creditor to attack a security transfer on the ground that the value of the property transferred is disproportionate to the debt secured. The premise of the new Act is that the value of the interest transferred for security is measured by and thus corresponds exactly to the debt secured. Foreclosure of a debtor's interest by a regularly conducted, noncollusive sale on default under a mortgage or other security agreement may not be avoided under the Act as a transfer for less than a reasonably equivalent value.

The definition of insolvency under the Act is adapted from the definition of the term in the Bankruptcy Code. Insolvency is presumed from proof of a failure generally to pay debts as they become due.

The new Act adds a new category of fraudulent transfer, namely, a preferential transfer by an insolvent insider to a creditor who had reasonable cause to believe the debtor to be insolvent. An insider is defined in much the same way as in the Bankruptcy Code and includes a relative, also defined as in the Bankruptcy Code, a director or officer of a corporate debtor, a partner, or a person in control of a debtor. This provision is available only to an existing creditor. Its premise is that an insolvent debtor is obliged to pay debts to creditors not related to him before paying those who are insiders.

The new Act omits any provision directed particularly at transfers or obligations of insolvent partnership debtors. Under § 8 [31-2-317, now repealed] of the Uniform Fraudulent Conveyance Act any transfer made or obligation incurred by an insolvent partnership to a partner is fraudulent without regard to intent or adequacy of consideration. So categorical a condemnation of a partnership transaction with a partner may unfairly prejudice the interests of a partner's separate creditors. The new Act also omits as redundant a provision in the original Act that makes fraudulent a transfer made or obligation incurred by an insolvent partnership for less than a fair consideration to the partnership.

Section 7 [31-2-339] lists the remedies available to creditors under the new Act. It eliminates as unnecessary and confusing a differentiation made in the original Act between the remedies available to holders of matured claims and those holding unmatured claims. Since promulgation of the Uniform Fraudulent Conveyance Act the Supreme Court has imposed restrictions on the availability and use of prejudgment remedies. As a result many states have amended their statutes and rules applicable to such remedies, and it is frequently unclear whether a state's procedures include a prejudgment remedy against a fraudulent transfer or obligation. A bracketed paragraph is included in Section 7 [31-2-339] for adoption by those states that elect to make such a remedy available.

Section 8 [31-2-340] prescribes the measure of liability of a transferee or obligee under the Act and enumerates defenses. Defenses against avoidance of a preferential transfer to an insider under § 5(b) [31-2-334(2)] include an adaptation of defenses available under § 547(c)(2) and (4) of the Bankruptcy Code when such a transfer is sought to be avoided as a preference by the trustee in bankruptcy. In addition a preferential transfer may be justified when shown to be made pursuant to a good faith effort to stave off forced liquidation and rehabilitate the debtor. Section 8 [31-2-340] also precludes avoidance, as a constructively fraudulent transfer, of the termination of a lease on default or the enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code [Title 30, chapter 9A].

The new Act includes a new section specifying when a transfer is made or an obligation is incurred. The section specifying the time when a transfer occurs is adapted from Section 548(d) of the Bankruptcy Code. Its premise is that if the law prescribes a mode for making the transfer a matter of public record or notice, it is not deemed to be made for any purpose under the Act until it has become such a matter of record or notice.

The new Act also includes a statute of limitations that bars the right rather than the remedy on expiration of the statutory periods prescribed. The law governing limitations on actions to avoid fraudulent transfers among the states is unclear and full of diversity. The Act recognizes that laches and estoppel may operate to preclude a particular creditor from pursuing a remedy against a fraudulent transfer or obligation even though the statutory period of limitations has not run.

Part Compiler's Comments

Case Law Retained: Prior to 1991 repeal, this part specified fraudulent conveyances. Case law has been retained as a convenience to the code user and may no longer apply.

Part Case Notes

DECISIONS AFTER 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Inadvertent Use of Previous Cause Number on New Complaint Considered Technical, Nonprejudicial Defect: One day before expiration of the statute of limitations, the Lundquists filed a pro se complaint against Shook, Hamilton, and McBeth for fraudulent transfer of property, but in preparing the complaint, the Lundquists used a template from a prior fraudulent transfer case involving Shook, Hamilton, and Pederson and included the same cause number from the prior case. The Lundquists' former counsel notified the District Court that he was not representing the Lundquists in the case involving McBeth. One day prior to service of process on McBeth, the District Court ordered the Clerk of the District Court to withdraw the Lundquists' complaint on grounds that the complaint was filed in the same cause of action previously pending, and the Lundquists did not obtain the court's consent to amend prior pleadings and have their attorney of record sign the complaint against McBeth. The Lundquists then moved to have the court assign a new cause number to the complaint and allow amendment of the complaint to retain the original filing date. The court denied the motion, holding that if a new complaint was to be filed and a new cause number assigned, it would be considered filed as of the date on which it was presented for filing and not the date on which it was originally attempted to be filed. Thus, a new complaint was filed with a new cause number and filing date, but the new complaint was filed after expiration of the statute of limitations for fraudulent conveyance actions, so the District Court granted McBeth's dismissal motion because the complaint was not timely filed. The Lundquists appealed, and the Supreme Court reversed. In filing the new complaint, the Lundquists had notified the court that they intended to proceed against McBeth in an action that was independent of the transfer litigated in the previous cause, and their use of the cause number from the previous action was inadvertent and a technical rather than fundamental defect. The Lundquists did not need the District Court's permission to file a new complaint, nor did the new pro se complaint require their attorney's signature. Because the Lundquists named McBeth in the complaint, filed the complaint prior to the expiration of the fraudulent transfer statute of limitations, and served McBeth with a copy of the complaint, McBeth was not prejudiced by the technical defect and the District Court should not have ordered the complaint withdrawn. Lundquist v. McBeth, 2001 MT 311, 308 M 1, 38 P3d 831 (2001).

Supreme Court Indicates Clean Hands Doctrine Not Part of Balancing Test of Weighing Unjust Enrichment Against Relief to One Attempting to Avoid Child Support: Fifer argued that the lower court was correct in awarding him certain real property under the theory of resulting trust because although he had placed the property in Neset's name to avoid child support obligations, she knew of his intent and therefore did not have clean hands. The Supreme Court indicated that on remand if the lower court decided that a resulting trust existed, it should not consider whether or not Neset had clean hands in using the statutorily required balancing test of weighing unjust enrichment to Neset by awarding her the property that was purportedly paid for by Fifer. If, after resolving fact issues, the lower court determined that a purchase money resulting trust was created, it was to weigh the proper factors in determining if the exception in 72-33-218 (now repealed) applied. Neset v. Fifer, 283 M 527, 942 P2d 712, 54 St. Rep. 777 (1997).

Finding of Fraudulent Conveyance Upheld — Law of the Case Doctrine Inapplicable: Murphys brought an action against Lewis for fraud in the sale of real property. Lewis raised the defense that he had previously been sued in a different action in which the District Court found that the conveyance of the ranch property in question was not a fraudulent conveyance and therefore that holding constituted the law of the case and was binding in subsequent legal actions. Citing St. v. Burlingame, 185 M 183, 605 P2d 176 (1980), the Supreme Court held that the law of the case doctrine applies only when the same parties and the same case are involved. Here, the Murphys were not parties to the previous litigation, nor is the case the same. The Supreme Court held that the law of the case doctrine was therefore inapplicable. Murphy v. Atkinson, 262 M 164, 864 P2d 273, 50 St. Rep. 1495 (1993).

DECISIONS PRIOR TO 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Finding of Fraudulent Conveyance Rather Than Payment in Preference Affirmed: Plaintiffs who leased mineral rights to a peat extraction operation from Foss obtained a $118,343.59 default judgment against Foss for intentional interference with access to the peat resources and for assault on one of the plaintiffs with a rifle. Foss conveyed his 44% interest in the property to his then-wife Fedder for $1, which gave her an 88% interest, and Foss's children from a previous marriage held the remaining 12% interest. Their marriage was subsequently dissolved. The District Court held that the property conveyance was fraudulent and allowed plaintiffs to levy execution upon the property. Fedder maintained on appeal that the transfer of title to her was in effect a payment in preference, allowable under 31-2-104, that was made in recognition that she would be entitled to maintenance or support from Foss when they dissolved their marriage. However, Fedder produced no evidence that she was a creditor of Foss at the time of the conveyance. The marriage was intact at the time of the conveyance, and the property transfer was not part of the dissolution, but rather preceded it. The District Court's decision was affirmed. Farmers Plant Aid, Inc. v. Fedder, 2000 MT 87, 299 M 206, 999 P2d 315, 57 St. Rep. 375 (2000).

Prosecution of Fraudulent Conveyance Action After Filing of Bankruptcy Petition Proper: Plaintiffs who leased mineral rights to a peat extraction operation from Foss obtained a $118,343.59 default judgment against Foss for intentional interference with access to the peat resources and for assault on one of the plaintiffs with a rifle in 1989. Foss transferred his 44% interest in the property to his then-wife Fedder for $1, which gave her an 88% interest, and Foss's children from a previous marriage held the remaining 12% interest. The marriage was subsequently dissolved, and Foss filed a bankruptcy petition in 1994, listing numerous creditors and no assets. Foss was dropped as a defendant, and plaintiffs pursued a fraudulent conveyance action against Fedder to collect on their judgment. The District Court voided the conveyance from Foss to Fedder, and granted defendants the right to levy execution upon the property.

Fedder appealed, asserting that when Foss filed the bankruptcy petition, the bankruptcy trustee acquired the right to avoid prepetition fraudulent conveyances and that plaintiffs thus lost their standing to pursue their claim. The Supreme Court noted that section 524(e) of the Bankruptcy Code provides that discharge of a debt does not affect the liability of any other entity for the debt. After the close of a bankruptcy, creditors are free to resume or commence a fraudulent conveyance action against the transferee in state court independent of the bankruptcy trustee, even when collection efforts may have occurred during pendency of the bankruptcy. Here, the trustee was appointed after this action was filed, and the Bankruptcy Court and the trustee had notice of the action during pendency of the bankruptcy, so the District Court did not err in granting the fraudulent conveyance judgment after conclusion of the bankruptcy proceedings. Further, pursuant to Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P2d 703 (1962), plaintiffs were not required to obtain a lien prior to bringing the fraudulent conveyance claim. Nothing mandates that a plaintiff file a proof of claim in Bankruptcy Court to preserve the right to pursue a fraudulent conveyance action against a third party transferee like Fedder. Farmers Plant Aid, Inc. v. Fedder, 2000 MT 87, 299 M 206, 999 P2d 315, 57 St. Rep. 375 (2000). See also Fed. Deposit Ins. Corp. v. Davis, 733 F2d 1083 (4th Cir. 1984), and Kathy B. Enterprises, Inc. v. U.S., 779 F2d 1413 (9th Cir. 1986).

Requirements of Complaint: A judgment creditor sought to set aside a conveyance by an insolvent debtor to his wife on the ground that it had been made with the intent to defraud creditors. The court held that the complaint must allege that the plaintiff had secured a lien on the property by issuance and return of execution unsatisfied. N. Mont. St. Bank v. Collins, 67 M 575, 216 P 330 (1923).

31-2-326. Short title.

Compiler's Comments

Source: Section 12, Uniform Fraudulent Transfer Act.

31-2-327. Uniformity of application and construction.

Compiler's Comments

Source: Section 11, Uniform Fraudulent Transfer Act.

Case Notes

Property Not Eligible for Homestead Protection When Derived From Fraudulent Transaction — Defendant Never Owned Property: The District Court correctly concluded that the defendant did not qualify for a homestead exemption. Although the homestead exemption may protect property from execution or forced sale under the Uniform Fraudulent Transfer Act, the property has to qualify as a homestead in the first place. The defendant's title to the property at issue derived from a fraudulent transaction. Because that transaction was declared void, the defendant never owned the property and could not claim the property as a homestead. 623 Partners, LLC v. Hunter, 2016 MT 336, 386 Mont. 24, 385 P.3d 963. See also In re Snyder, 2006 MT 308, 335 Mont. 11, 149 P.3d 26, and McCone County Fed. Credit Union v. Gribble, 2009 MT 290, 352 Mont. 254, 216 P.3d 206.

Homestead Property Not Asset Subject to Uniform Fraudulent Transfer Act: Gribble took out at least four loans with the credit union and defaulted on most if not all of them. The loans were secured with large equipment, not real property. The credit union filed a complaint seeking repayment and the right to foreclose on the collateral. Gribble transferred his residential real property to another party by quitclaim deed 11 days later. The credit union asked the District Court to set aside the transfer under the Uniform Fraudulent Transfer Act (UFTA), but instead the court granted summary judgment to defendant, and the credit union appealed. The Supreme Court held that because the real property was Gribble's residence, it qualified as a homestead that would generally be exempt under nonbankruptcy law and thus was not an asset for purposes of the UFTA. The District Court was affirmed. McCone County Fed. Credit Union v. Gribble, 2009 MT 290, 352 M 254, 216 P3d 206 (2009).

31-2-328. Definitions.

Compiler's Comments

Source: Section 1, Uniform Fraudulent Transfer Act.

Case Notes

Property Not Eligible for Homestead Protection When Derived From Fraudulent Transaction — Defendant Never Owned Property: The District Court correctly concluded that the defendant did not qualify for a homestead exemption. Although the homestead exemption may protect property from execution or forced sale under the Uniform Fraudulent Transfer Act, the property has to qualify as a homestead in the first place. The defendant's title to the property at issue derived from a fraudulent transaction. Because that transaction was declared void, the defendant never owned the property and could not claim the property as a homestead. 623 Partners, LLC v. Hunter, 2016 MT 336, 386 Mont. 24, 385 P.3d 963. See also In re Snyder, 2006 MT 308, 335 Mont. 11, 149 P.3d 26, and McCone County Fed. Credit Union v. Gribble, 2009 MT 290, 352 Mont. 254, 216 P.3d 206.

Homestead Property Not Asset Subject to Uniform Fraudulent Transfer Act: Gribble took out at least four loans with the credit union and defaulted on most if not all of them. The loans were secured with large equipment, not real property. The credit union filed a complaint seeking repayment and the right to foreclose on the collateral. Gribble transferred his residential real property to another party by quitclaim deed 11 days later. The credit union asked the District Court to set aside the transfer under the Uniform Fraudulent Transfer Act (UFTA), but instead the court granted summary judgment to defendant, and the credit union appealed. The Supreme Court held that because the real property was Gribble's residence, it qualified as a homestead that would generally be exempt under nonbankruptcy law and thus was not an asset for purposes of the UFTA. The District Court was affirmed. McCone County Fed. Credit Union v. Gribble, 2009 MT 290, 352 M 254, 216 P3d 206 (2009).

31-2-329. Insolvency.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Source: Section 2, Uniform Fraudulent Transfer Act.

Case Notes

DECISIONS PRIOR TO 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Insolvency as Matter of Law: Debtor was insolvent as a matter of law at the time he conveyed his ranch property to his children where his total liabilities exceeded his total assets by over $7,000, including in that computation an $11,000 debt to the Federal Land Bank on which debtor remained principal debtor despite a purported assumption of the obligation by his son. Baker Nat'l Bank v. Lestar, 153 M 45, 453 P2d 774 (1969).

Insolvency at Time of Transfer Not Required: In an action in claim and delivery by the purchaser of a band of horses seized by a trustee in bankruptcy, it was immaterial that it was not shown that vendor was in debt at the time of the alleged sale. As against his creditors or the trustee in bankruptcy, the sale was void under 31-2-315 (now repealed). Anderson v. Hoffman, 99 M 146, 43 P2d 644 (1935).

Insolvency Required for Avoidance: Under 31-2-323 (now repealed), section 29-207, R.C.M. 1947 (now repealed), and 31-2-316 (now repealed), a creditor seeking to set aside a transfer as fraudulent must allege and prove that the debtor was insolvent at the time he made the conveyance and that he had no other property out of which his claim could be satisfied or enforced by legal process. Ferrell v. Elling, 84 M 384, 276 P 432 (1929); Hale v. Belgrade Co., Ltd., 75 M 99, 242 P 425 (1925).

Return of Execution Unsatisfied: The return of an execution unsatisfied is sufficient proof of the exhaustion of a creditor's legal remedy. The return establishes prima facie the insolvency of the debtor, and that he has no other property out of which the execution could be made. The execution creditor is entitled to maintain a suit to set aside such conveyances as fraudulent to his rights. Hart-Parr Co. v. Schafer, 73 M 429, 236 P 675 (1925).

31-2-330. Value.

Compiler's Comments

Source: Section 3, Uniform Fraudulent Transfer Act.

Case Notes

DECISIONS PRIOR TO 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Adequate Consideration: In a suit to set aside a fraudulent conveyance, where the disparity between value received and obligations assumed is so great that the trial court would and should have made the same decision, failure to make a specific finding of value of the property as of the date of the transfer is not reversible error. Mont. Ass'n of Credit Management v. Hergert, 181 M 442, 593 P2d 1059 (1979), followed in Farmers Plant Aid, Inc. v. Fedder, 2000 MT 87, 299 M 206, 999 P2d 315, 57 St. Rep. 375 (2000).

31-2-333. Transfers fraudulent as to present and future creditors.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Source: Section 4, Uniform Fraudulent Transfer Act.

Case Notes

DECISIONS AFTER 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Favoritism Between Legitimate, Unprioritized Creditors — No Fraudulent Transfer: A debtor owed money to the plaintiff. The debtor later received money from a third party that he used to purchase real property. Then, while the debtor was insolvent, he repaid the third party by transferring the property to the third party. The plaintiff claimed the transfer was fraudulent and the District Court agreed. On appeal, the third party argued that the facts did not support the finding that the parcel was fraudulently transferred but rather indicated a legitimate repayment of a loan. The Supreme Court agreed that the plaintiff had not proved the third party was an insider or that the transfer was without receipt of a reasonable equivalent value in exchange for the transfer. The Supreme Court reversed, declaring that a show of favoritism between legitimate, unprioritized creditors does not, by itself, constitute a fraudulent transfer. Larson Lumber Co., Inc. v. Bilt Rite Constr. & Landscaping, LLC, 2014 MT 61, 374 Mont. 167, 320 P.3d 471.

Failure to File Suit Within Statutory Limits Precluding Action Under Uniform Fraudulent Transfer Act: Plaintiff insurers brought an action in 1995 in California federal District Court demanding reimbursement for their performance pursuant to indemnity bond agreements concerning government construction contracts that Clark and other defendants breached. Plaintiffs were awarded default money judgments in 1997 after defendants failed to appear. However, shortly after the action was filed in 1995, Clark recorded five deeds conveying tracts of Montana real property from himself to his corporation. Plaintiffs alleged that the transfers were made with the actual intent to prevent plaintiffs from executing judgment against Clark individually, so in 1999, within 2 years after the federal judgment was entered in their favor, plaintiffs filed a complaint in state District Court in Montana seeking to have Clark's alleged fraudulent conveyances declared void under the Uniform Fraudulent Transfer Act. Clark moved for summary judgment on grounds that the statute of limitations in 31-2-341 extinguished the fraudulent transfer claim, and the motion was granted under the rationale that a cause of action with respect to a fraudulent transfer must be brought either within 2 years of the transfer itself or within 1 year of the reasonable discovery of the transfer by the claimant. Numerous affidavits indicated that plaintiffs were aware that Clark resided in Montana when the original indemnity agreements were entered in 1993 and had used private investigators in 1995 and 1996 to collect information on Clark's whereabouts so that the default judgment could be entered. The District Court found that plaintiffs had missed the deadline requiring filing of a claim within 2 years of transfer and that the deeds could have reasonably been discovered at any time following the date of recording. Plaintiffs appealed, but the Supreme Court affirmed. In this case, the claim that Clark transferred the assets with intent to hinder, delay, or defraud was afforded the more lenient statute of limitations under 31-2-341(1), so plaintiffs had 2 years after the transfers were made or 1 year after the transfers were discovered or could reasonably have been discovered to file suit. The District Court did not err in concluding that plaintiffs could have reasonably discovered the deed transfers any time after the date of recording. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

Statute of Limitations Under Repealed Uniform Fraudulent Conveyance Act Displaced by Explicit Statute of Limitations in Uniform Fraudulent Transfer Act: Plaintiff insurers argued that a creditor may not assert a claim under the Uniform Fraudulent Transfer Act (UFTA) until after the underlying judgment is entered, citing Murphy v. Atkinson, 262 M 164, 864 P2d 273 (1993). Plaintiffs were correct to the extent that prior to the adoption of UFTA in 1991, the statute of limitations for fraudulent transfers under the now repealed Uniform Fraudulent Conveyance Act was supplied by the general rule for fraud under 27-2-203. However, after adoption of UFTA, Murphy, in conjunction with 27-2-203, was no longer the rule of law, but rather the statute of limitations in 31-2-341 applied and provided that a judgment in hand is no longer a prerequisite for establishing standing to bring a UFTA claim. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

When Statute of Limitations Affecting Liability for Claim Arising Before Transfer Occurs: Generally, the Uniform Fraudulent Transfer Act (UFTA) addresses transfers of property that have already occurred; however, 31-2-334 and this section may establish the liability of a debtor as to a creditor whose claim arose before the transfer occurred, as in this case, if: (1) the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor; (2) the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor was engaged or about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or intended to incur or believed or reasonably should have believed that debts would be incurred beyond the ability to pay as they became due; (3) the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor became insolvent as a result of the transfer; or (4) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent. These actions are subject to the explicit statute of limitations under 31-2-341, and the burden of establishing facts necessary to bar a claim under UFTA rests with the debtor. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

DECISIONS PRIOR TO 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Prosecution of Fraudulent Conveyance Action After Filing of Bankruptcy Petition Proper: Plaintiffs who leased mineral rights to a peat extraction operation from Foss obtained a $118,343.59 default judgment against Foss for intentional interference with access to the peat resources and for assault on one of the plaintiffs with a rifle in 1989. Foss transferred his 44% interest in the property to his then-wife Fedder for $1, which gave her an 88% interest, and Foss's children from a previous marriage held the remaining 12% interest. The marriage was subsequently dissolved, and Foss filed a bankruptcy petition in 1994, listing numerous creditors and no assets. Foss was dropped as a defendant, and plaintiffs pursued a fraudulent conveyance action against Fedder to collect on their judgment. The District Court voided the conveyance from Foss to Fedder, and granted defendants the right to levy execution upon the property. Fedder appealed, asserting that when Foss filed the bankruptcy petition, the bankruptcy trustee acquired the right to avoid prepetition fraudulent conveyances and that plaintiffs thus lost their standing to pursue their claim. The Supreme Court noted that section 524(e) of the Bankruptcy Code provides that discharge of a debt does not affect the liability of any other entity for the debt. After the close of a bankruptcy, creditors are free to resume or commence a fraudulent conveyance action against the transferee in state court independent of the bankruptcy trustee, even when collection efforts may have occurred during pendency of the bankruptcy. Here, the trustee was appointed after this action was filed, and the Bankruptcy Court and the trustee had notice of the action during pendency of the bankruptcy, so the District Court did not err in granting the fraudulent conveyance judgment after conclusion of the bankruptcy proceedings. Further, pursuant to Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P2d 703 (1962), plaintiffs were not required to obtain a lien prior to bringing the fraudulent conveyance claim. Nothing mandates that a plaintiff file a proof of claim in Bankruptcy Court to preserve the right to pursue a fraudulent conveyance action against a third party transferee like Fedder. Farmers Plant Aid, Inc. v. Fedder, 2000 MT 87, 299 M 206, 999 P2d 315, 57 St. Rep. 375 (2000). See also Fed. Deposit Ins. Corp. v. Davis, 733 F2d 1083 (4th Cir. 1984), and Kathy B. Enterprises, Inc. v. U.S., 779 F2d 1413 (9th Cir. 1986).

Lack of Sufficient Evidence — Finding of Fraud Reversed: The defendant and his wife purchased property secured by a trust indenture. Unable to obtain financing because of the plaintiff's prior judgment, the defendant quitclaimed the property back to the sellers. Shortly thereafter, the defendant's wife's stepfather purchased the property and deeded it to the defendant's wife. The property was eventually sold to a third party. The plaintiff sued to attach the proceeds from the sale by the wife. The Supreme Court held that the District Court erred in determining that the series of conveyances were fraudulent under the Uniform Fraudulent Conveyance Act (now repealed). The plaintiff failed to meet the burden of proving that the transactions were fraudulent. The District Court's findings that the series of transactions were fraudulent were clearly erroneous. Jones v. Arnold, 272 M 317, 900 P2d 917, 52 St. Rep. 779 (1995). See also Larson Lumber Co., Inc. v. Bilt Rite Constr. & Landscaping, LLC, 2014 MT 61, 374 Mont. 167, 320 P.3d 471.

Husband's Transfer of Property to Wife Found Fraudulent: Anderson was a partner in a business enterprise that owed substantial back taxes and that faced imminent balloon payments at the time that he conveyed his interest in real and personal property to his wife. McDonald, one of Anderson's partners, paid Anderson's share of the business's obligation and subsequently sued Anderson to recover the money that he had advanced on Anderson's behalf and asked the court to set aside the conveyance of property by Anderson to his wife as fraudulent. Anderson testified that each month he gifted his retirement checks to his wife and she in return, as a gift to him, paid his living expenses. The Supreme Court held that the Uniform Fraudulent Conveyance Act was the law in effect in 1986 when the property was transferred and was the appropriate law to apply to the case. The Supreme Court held that the conveyance was fraudulent as to present and future creditors because Anderson retained control of the property. McDonald v. Anderson, 261 M 268, 862 P2d 402, 50 St. Rep. 1317 (1993).

Real Estate Conveyance — No Fraud — Purchasers Presented With Copy of Covenants: The plaintiffs sued to recover damages from the defendants on the basis that after they purchased property from the defendants, they learned that restrictive covenants prohibited the operation of a business on the property. The Supreme Court held that the plaintiffs should have known of the covenants because they were presented with the title report and a summary that described the restrictions in clear language. Pare v. Morrison, 241 M 218, 786 P2d 655, 47 St. Rep. 222 (1990).

Transfer Not Fraudulent — No Intent to Defraud Creditors: Plaintiff purchased a ranch on behalf of defendant with defendant's money but put title to the ranch in plaintiff's name and operated the ranch for defendant. The parties subsequently executed documents to settle the dispute between them concerning the ranch property. Plaintiff executed a quitclaim deed of the property to defendant, and defendant promised to pay plaintiff for operating the ranch. Defendant then transferred the property to his wife. He did not pay plaintiff the complete amount he had promised. The record does not support plaintiff's argument that the transfer by defendant to his wife was made to defraud plaintiff as a creditor of defendant or to render defendant insolvent. O'Connor v. Lewis, 238 M 270, 776 P2d 1228, 46 St. Rep. 1260 (1989).

Indicators of Fraudulent Intent — Finding of Fraud Affirmed: In an action to set aside two conveyances of real property as a fraud by the defendant upon the plaintiff creditor, the trial court correctly found that in each case the defendant intended to defraud the plaintiff and correctly set them aside as fraudulent conveyances. Generally recognized signs of fraud are lack of consideration, transfer of the debtor's entire estate, the relationship between the transferor and the transferee, the threat of litigation, insolvency of the transferor, departure from the usual method of business, and a retention of possession for the benefit of the transferor. Because the record showed that many of these indicators of fraud were present, the judgment of the District Court was affirmed. Mont. Nat'l Bank v. Michels, 193 M 295, 631 P2d 1260, 38 St. Rep. 334 (1981), followed in O'Connor v. Lewis, 230 M 270, 776 P2d 1228, 46 St. Rep. 1260 (1989), and distinguished in Jones v. Arnold, 272 M 317, 900 P2d 917, 52 St. Rep. 779 (1995).

Creation of Joint Bank Account: Creation of a joint bank account 11 years before the death of the decedent was not a fraudulent conveyance. Casa Grande v. Donahue, 178 M 479, 585 P2d 1286 (1978), followed in Vogele v. Estate of Schock, 229 M 259, 745 P2d 1138, 44 St. Rep. 1950 (1987).

Sufficiency of Evidence: Finding of District Court that transferor of property had no intent to defraud creditors was supported by the following substantial evidence: a substantial cash payment to transferor; application of entire proceeds to transferor's debts; lack of secrecy in transaction; application of wife's interest in part of property transferred to husband's debts; sale of fractional interest in mother's estate to brother also holding fractional interest therein, who presumably would be willing to pay more than stranger; and apparent existence of sufficient remaining assets with which to discharge transferor's remaining indebtedness. White v. Nollmeyer, 151 M 387, 443 P2d 873 (1968).

Transfer of Mares: When an alleged transfer of mares to plaintiff in exchange for other animals was not accompanied by immediate delivery and was not followed by actual and continued change of possession, the transfer was conclusively presumed to be fraudulent and void as against holders in good faith of subsequently executed notes and chattel mortgage and against the Sheriff acting at direction of holders and pursuant to terms of mortgage. Reagan v. Armstrong, 118 M 273, 165 P2d 1004 (1946).

"Badges of Fraud": "Badges of fraud", as applied to fraudulent conveyances, are facts which throw suspicion on a transaction. They are signs of fraud which, though not sufficient to constitute fraud, have a tendency to show its existence. Types of signs are: a fictitious consideration, a transfer in anticipation of a suit, an excessive effort to conceal the real nature of the transfer,

retention of possession of the property transferred, or reservation of a trust to the use of the transferor. Where several of such badges are found in the same transaction, strong and clear evidence is required to repel the conclusion of fraudulent intent. Humbird v. Arnet, 99 M 499, 44 P2d 756 (1935).

Use of Closely Held Corporation: The maker of a promissory note, after the due date of the note, transferred a two-fifths interest in personal property to his wife. A few days after service of summons in the action on the note, he organized a corporation with the aid of his wife and an employee. The bulk of the capital stock was held by the maker's wife and father, the latter being ignorant of the formation of the company and who paid nothing for the stock. The defendant then turned over all his remaining property to the corporation. These facts warranted a finding that the transfers were fraudulent. Edenfield v. Seal Co., Inc., 83 M 49, 270 P 642 (1928).

Close Relationship of Parties: A near relationship between the parties to a conveyance is not of itself a badge of fraud, but will subject the transaction to close scrutiny. Here, the husband transferred realty to his wife for the consideration of $1 and the evidence merely showed that the grantor was indebted to plaintiff 4 years after the transfer. Plaintiff sought to establish the value of the property by the testimony of the assessor, which was vague and indefinite, but did show that grantor had other property at the time of the transfer. Defendant was not required to assume the burden of showing good faith or adequacy of consideration, and dismissal was proper. Dick v. King, 80 M 40, 257 P 1022 (1927). See also Koopman v. Mansolf, 51 M 48, 149 P 491 (1915).

Retention of Power of Attorney: The owner of property worth $67,500 transferred it to his sister for the consideration of $1. The sister then gave him a power of attorney under which he practically had the same control over it as he had before the transfer. The trial court erred in holding that plaintiff had not made out a prima facie case of fraudulent conveyance. Hart-Parr Co. v. Schafer, 73 M 429, 236 P 675 (1925).

31-2-334. Transfers fraudulent as to present creditors.

Compiler's Comments

Source: Section 5, Uniform Fraudulent Transfer Act.

Case Notes

Property Not Eligible for Homestead Protection When Derived From Fraudulent Transaction — Defendant Never Owned Property: The District Court correctly concluded that the defendant did not qualify for a homestead exemption. Although the homestead exemption may protect property from execution or forced sale under the Uniform Fraudulent Transfer Act, the property has to qualify as a homestead in the first place. The defendant's title to the property at issue derived from a fraudulent transaction. Because that transaction was declared void, the defendant never owned the property and could not claim the property as a homestead. 623 Partners, LLC v. Hunter, 2016 MT 336, 386 Mont. 24, 385 P.3d 963. See also In re Snyder, 2006 MT 308, 335 Mont. 11, 149 P.3d 26, and McCone County Fed. Credit Union v. Gribble, 2009 MT 290, 352 Mont. 254, 216 P.3d 206.

Failure to File Suit Within Statutory Limits Precluding Action Under Uniform Fraudulent Transfer Act: Plaintiff insurers brought an action in 1995 in California federal District Court demanding reimbursement for their performance pursuant to indemnity bond agreements concerning government construction contracts that Clark and other defendants breached. Plaintiffs were awarded default money judgments in 1997 after defendants failed to appear. However, shortly after the action was filed in 1995, Clark recorded five deeds conveying tracts of Montana real property from himself to his corporation. Plaintiffs alleged that the transfers were made with the actual intent to prevent plaintiffs from executing judgment against Clark individually, so in 1999, within 2 years after the federal judgment was entered in their favor, plaintiffs filed a complaint in state District Court in Montana seeking to have Clark's alleged fraudulent conveyances declared void under the Uniform Fraudulent Transfer Act. Clark moved for summary judgment on grounds that the statute of limitations in 31-2-341 extinguished the fraudulent transfer claim, and the motion was granted under the rationale that a cause of action with respect to a fraudulent transfer must be brought either within 2 years of the transfer itself or within 1 year of the reasonable discovery of the transfer by the claimant. Numerous affidavits indicated that plaintiffs were aware that Clark resided in Montana when the original indemnity agreements were entered in 1993 and had used private investigators in 1995 and 1996 to collect information on Clark's whereabouts so that the default judgment could be entered. The District Court found that plaintiffs had missed the deadline requiring filing of a claim within 2 years of transfer and that the deeds could have reasonably been discovered at any time following the date of recording. Plaintiffs appealed, but the Supreme Court affirmed. In this case, the claim that Clark transferred the assets with intent to hinder, delay, or defraud was afforded the more lenient statute of limitations under 31-2-341(1), so plaintiffs had 2 years after the transfers were made or 1 year after the transfers were discovered or could reasonably have been discovered to file suit. The District Court did not err in concluding that plaintiffs could have reasonably discovered the deed transfers any time after the date of recording. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

Statute of Limitations Under Repealed Uniform Fraudulent Conveyance Act Displaced by Explicit Statute of Limitations in Uniform Fraudulent Transfer Act: Plaintiff insurers argued that a creditor may not assert a claim under the Uniform Fraudulent Transfer Act (UFTA) until after the underlying judgment is entered, citing Murphy v. Atkinson, 262 M 164, 864 P2d 273 (1993). Plaintiffs were correct to the extent that prior to the adoption of UFTA in 1991, the statute of limitations for fraudulent transfers under the now repealed Uniform Fraudulent Conveyance Act was supplied by the general rule for fraud under 27-2-203. However, after adoption of UFTA, Murphy, in conjunction with 27-2-203, was no longer the rule of law, but rather the statute of limitations in 31-2-341 applied and provided that a judgment in hand is no longer a prerequisite for establishing standing to bring a UFTA claim. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

When Statute of Limitations Affecting Liability for Claim Arising Before Transfer Occurs: Generally, the Uniform Fraudulent Transfer Act (UFTA) addresses transfers of property that have already occurred; however, 31-2-333 and this section may establish the liability of a debtor as to a creditor whose claim arose before the transfer occurred, as in this case, if: (1) the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor; (2) the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor was engaged or about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or intended to incur or believed or reasonably should have believed that debts would be incurred beyond the ability to pay as they became due; (3) the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor became insolvent as a result of the transfer; or (4) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent. These actions are subject to the explicit statute of limitations under 31-2-341, and the burden of establishing facts necessary to bar a claim under UFTA rests with the debtor. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

31-2-335. When transfer made or obligation incurred.

Compiler's Comments

Source: Section 6, Uniform Fraudulent Transfer Act.

Case Notes

DECISIONS PRIOR TO 1991 ENACTMENT
OF UNIFORM FRAUDULENT TRANSFER ACT

Prosecution of Fraudulent Conveyance Action After Filing of Bankruptcy Petition Proper: Plaintiffs who leased mineral rights to a peat extraction operation from Foss obtained a $118,343.59 default judgment against Foss for intentional interference with access to the peat resources and for assault on one of the plaintiffs with a rifle in 1989. Foss transferred his 44% interest in the property to his then-wife Fedder for $1, which gave her an 88% interest, and Foss's children from a previous marriage held the remaining 12% interest. The marriage was subsequently dissolved, and Foss filed a bankruptcy petition in 1994, listing numerous creditors and no assets. Foss was dropped as a defendant, and plaintiffs pursued a fraudulent conveyance action against Fedder to collect on their judgment. The District Court voided the conveyance from Foss to Fedder, and granted defendants the right to levy execution upon the property. Fedder appealed, asserting that when Foss filed the bankruptcy petition, the bankruptcy trustee acquired the right to avoid prepetition fraudulent conveyances and that plaintiffs thus lost their standing to pursue their claim. The Supreme Court noted that section 524(e) of the Bankruptcy Code provides that discharge of a debt does not affect the liability of any other entity for the debt. After the close of a bankruptcy, creditors are free to resume or commence a fraudulent conveyance action against the transferee in state court independent of the bankruptcy trustee, even when collection efforts may have occurred during pendency of the bankruptcy. Here, the trustee was appointed after this action was filed, and the Bankruptcy Court and the trustee had notice of the action during pendency of the bankruptcy, so the District Court did not err in granting the fraudulent conveyance judgment after conclusion of the bankruptcy proceedings. Further, pursuant to Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P2d 703 (1962), plaintiffs were not required to obtain a lien prior to bringing the fraudulent conveyance claim. Nothing mandates that a plaintiff file a proof of claim in Bankruptcy Court to preserve the right to pursue a fraudulent conveyance action against a third party transferee like Fedder. Farmers Plant Aid, Inc. v. Fedder, 2000 MT 87, 299 M 206, 999 P2d 315, 57 St. Rep. 375 (2000). See also Fed. Deposit Ins. Corp. v. Davis, 733 F2d 1083 (4th Cir. 1984), and Kathy B. Enterprises, Inc. v. U.S., 779 F2d 1413 (9th Cir. 1986).

Defrauding Creditor — Elements of Sale Necessary to Establish Ownership: A judgment was entered in favor of the plaintiff, Kovacich, because of failure of Norgaard to make payments for the purchase of farm machinery. Kovacich made an attempt to levy against a truck owned by Norgaard, who, upon learning the truck was going to be seized, removed it from a consignment lot and sold it to McNair, a close friend. McNair did not register the truck in his name or purchase insurance for it. The Department of Justice verified that the truck was registered to Norgaard, and thereafter a Writ of Execution was issued, pursuant to which the truck was seized. Norgaard obtained a Writ of Prohibition preventing sale of the truck. After a hearing, the District Court set aside the Writ of Prohibition, allowing Kovacich to proceed with the sale, and Norgaard appealed, contending District Court error in allowing the sale. The Supreme Court found that resolution of the issue turned on whether the transaction between Norgaard and McNair was an attempt by Norgaard to defraud his creditor. The court held that under 31-2-315 (now repealed), unless the transfer from Norgaard to McNair was accompanied by immediate delivery and followed by an actual and continued change of possession, the transfer "is conclusively presumed to be fraudulent and therefore void against those who are his creditors while he remains in possession". Finding no evidence of immediate delivery or of any actual change of possession, the District Court order allowing sale was upheld. Kovacich v. Norgaard, 221 M 26, 716 P2d 633, 43 St. Rep. 608 (1986).

Marital Separation Agreement Not Conveyance: A marital separation agreement is not a conveyance. A separation agreement incorporated into a divorce decree is enforceable only as a judgment. A judgment can be reopened if obtained through fraud but not for lack of fair consideration. It was error to annul a marital separation agreement under this section. Witbart v. Witbart, 204 M 446, 666 P2d 1217, 40 St. Rep. 994 (1983).

Growing Crops: Where grain was sold before harvesting and delivered to the elevator for purchaser as soon after harvesting as practicable, title passed upon delivery to the warehouseman. Claypool v. Malta Standard Garage, 96 M 285, 30 P2d 89 (1934).

Transfer Between Spouses: A person may do with his property as he sees fit: sell it for less than it is worth or give it away, even though he is indebted or insolvent. When fraud enters into the transaction and creditors who are affected attack the transfer as fraudulent, the insolvency of the grantor and gross inadequacy of consideration are badges of fraud. While the relationship of husband and wife is not a badge of fraud, transactions between them, because of the opportunity for fraud, are subject to the most rigid scrutiny. The fact of such relationship may be considered in determining the intention with which the transfer was made. First Nat'l Bank v. Conner, 85 M 229, 278 P 143 (1929).

Determining Factors: Whether there has been an immediate delivery and actual possession in the vendee of the thing sold depends upon the character of the article sold, the nature of the transaction, the position of the parties, and the intended use of the property. O. W. Perry Co. v. Mullen, 81 M 482, 263 P 976 (1928).

Question of Fact: When the evidence is conflicting, it is for the jury to say whether there was any such immediate delivery and actual and continued change of possession. Tomcheck v. Maryland Cas. Co., 75 M 557, 244 P 506 (1926); W. Min. Supply Co. v. Melzner, 48 M 174, 136 P 44 (1913).

Statement Insufficient: The mere statement, "It is yours", made with reference to a quantity of grain by the transferor to the transferee in an attorney's office miles away from where the grain was stored was insufficient as against an attaching creditor of the transferor. Wells v. Esgar, 72 M 333, 233 P 123 (1925).

Continued Possession: While a mere temporary change of possession of personal property will not avail against the claim of a creditor of the vendor, the change need not necessarily continue until the property is seized by the creditor. Puckett v. Hopkins, 63 M 137, 206 P 422 (1922).

Constructive Possession: Section 31-2-315 (now repealed) did not speak of actual possession, but of actual change of possession. Legal possession may be either actual or constructive. Dover Lumber Co. v. Whitcomb, 54 M 141, 168 P 947 (1917).

Reasonable Time: It is sufficient that there was a change of possession for a reasonable length of time, that is, such a period of time as will preclude the idea that the sale was a colorable one. Chestnut v. Sales, 44 M 534, 121 P 481 (1912).

Warehouse Contents: The delivery of the key to a warehouse standing on leased ground, sold to plaintiff, constituted a sufficient delivery of the property sold. W. Min. Supply Co. v. Quinn, 40 M 156, 105 P 732 (1909).

Part Delivery: When one purchases a herd of range cattle with the brand, but delivery of only a portion thereof is actually made, the vendee may not recover those not delivered from a subsequent purchaser in good faith. Ettien v. Drum, 32 M 311, 80 P 369 (1905).

Effect on Mortgages: A mortgage of personal property and transfer thereunder are void against a trustee in bankruptcy when the mortgage was made more than 14 months prior to the transfer. Stewart v. Hoffman, 31 M 184, 77 P 689 (1904).

Effect as to Assignee for Benefit for Creditors: A transfer by a debtor of property not accompanied by change of possession is not void as against the assignee for the benefit of the debtor's creditors under 31-2-315 (now repealed), as the estate does not "devolve" by such assignment, but is granted by it. Babcock v. Maxwell, 29 M 31, 74 P 64 (1903).

Instructions to Jury: Instructions on question of whether or not a sale of personal property was accompanied by immediate delivery and followed by an actual and continued change of possession of the chattels were not erroneous. Morris v. McLaughlin, 25 M 151, 64 P 219 (1901).

Creditor's Right: In a creditor's suit to set aside a sale of sheep as fraudulent because there was no continued change of possession, when only a part of them remained in the possession of the purchaser at the time the creditors secured their lien, a judgment that the purchaser should deliver to the Sheriff for the benefit of the creditors all the sheep purchased or account for their proceeds was erroneous. Finch v. Kent, 24 M 268, 61 P 653 (1900).

Range Animals: When the vendors drove all their horses, which were branded alike, into a corral, and after horses sold to a purchaser had been selected from the corral, branded with a bar under the previous brand, and turned loose with other horses "on the range", and the vendors executed a bill of sale for the horses purchased, there was an immediate delivery. Dodge v. Jones, 7 M 121, 14 P 707 (1887). See Taylor v. Malta Mercantile Co., 47 M 342, 132 P 549 (1913); Dover Lumber Co. v. Whitcomb, 54 M 141, 168 P 947 (1917).

Assignment Without Delivery: An assignment of goods without an actual delivery of possession is conclusive evidence of fraud as against creditors of the assignor. Where in an action of claim and delivery by the assignee of goods against a Sheriff who had attached the goods as those of the assignor, an allegation that the assignment is fraudulent as to the attaching creditor presents a proper and material issue and should not be stricken. Botcher v. Berry, 6 M 448, 13 P 45 (1887).

Delay in Delivery: The fact that property was sold on one day and not delivered until the next does not render the sale void, if delivery was impossible on the day of sale. O'Gara v. Lowry, 5 M 427, 5 P 583 (1885).

Employment of Vendor by Vendee: The fact that the vendee of a horse and wagon employed the brother of the vendor to drive it, and subsequently, for a short time, employed the vendor, does not show such a want of continued possession in the vendee as to render the sale void. O'Gara v. Lowry, 5 M 427, 5 P 583 (1885).

31-2-339. Remedies of creditors.

Compiler's Comments

Source: Section 7, Uniform Fraudulent Transfer Act.

Case Notes

DECISIONS PRIOR TO 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Execution Against Asset Conveyed: The judgment entered by the District Court that plaintiff could proceed to levy execution against the asset conveyed was a proper remedy clearly within 31-2-321 (now repealed). Mont. Ass'n of Credit Management v. Hergert, 181 M 442, 593 P2d 1059 (1979).

Real Party in Interest: All that is necessary to constitute a plaintiff the "real party in interest" within terms of a statute authorizing him to sue is that he be vested with legal title. Therefore, an assignee of a cause of action for collection may sue. Mont. Ass'n of Credit Management v. Hergert, 181 M 442, 593 P2d 1059 (1979).

Joinder of Actions: A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair consideration and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P2d 703 (1962).

Money Judgment: The right to seek a money judgment is merely collateral to the primary right to set aside the conveyance. Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P2d 703 (1962).

Parties to Actions: Although executor or administrator is not a necessary party to an action seeking to set aside an alleged fraudulent conveyance of decedent, he is a proper party and the creditors have the right to resort to sections 91-3209 and 91-3210, R.C.M. 1947 (now repealed), and cause the executor or administrator to commence and prosecute such an action. In re Estate of Adkins, 133 M 27, 319 P2d 512 (1957).

Creation of Resulting Trust: Testimony showed that decedent transferred funds to defendant to purchase property for him in order to avoid having his wife obtain an interest in the property. A court of equity will not aid one who has caused title to his property to be transferred to another for the purpose of defrauding his creditors. Here, however, no creditor was defrauded and a resulting trust was found for decedent's wife. Thompson v. Steinkamp, 120 M 475, 187 P2d 1018 (1947), followed in Hilliard v. Hilliard, 255 M 487, 844 P2d 54, 49 St. Rep. 1080 (1992).

Creditor May Follow Proceeds: A complaining creditor has the right to follow the proceeds of a fraudulent conveyance either as money or into any property in which it may have been invested, so far as it can be traced and into the possession of any person not a bona fide holder. First Nat'l Bank v. Conner, 85 M 229, 278 P 143 (1929).

Judicial Sales: A sale of personal property by a Sheriff under a provision in a chattel mortgage authorizing him to sell the property in case of default is not a judicial sale, but falls within the letter and spirit of 31-2-315 (now repealed). Kerr v. Blaine, 49 M 602, 144 P 566 (1914). See Banking Corp. of Mont. v. Hein, 52 M 238, 156 P 1085 (1916).

Legislative Intent: By 31-2-315 (now repealed) the Legislature did not intend to go further than to declare that, during the time the vendor of personal property remains in possession after sale, his creditors may seize the property in satisfaction of their claims, notwithstanding such sale. W. Min. Supply Co. v. Quinn, 40 M 156, 105 P 732 (1909).

Retention of Possession of Goods for Retail Sale: Defendants, after contracting a debt to plaintiffs for merchandise, executed a chattel mortgage to a third party covering all their property. Part of the property consisted of a stock of goods which had been used as consideration for a previous loan, which the mortgagors had used to purchase other goods. Further consideration for the previous loan were certain debts assumed by the mortgagee. The total value of the goods was only a reasonable security for the combined debt. Under the chattel mortgage, the mortgagors were to remain in possession of the goods, sell at retail for cash or on 30-days' credit in the usual course of business, and account to the mortgagee for the proceeds of the sales. One of the mortgagors was also allowed to retain living expenses from the proceeds of the sales. The balance of the proceeds, after deduction of costs, was to go to the mortgagee. The mortgagee, in fear of losing his security, made a sale of the goods by public auction prior to the maturity of the debt. These transactions were held not to be a fraud on the creditors because of the accounting required and the application of the proceeds to the debt. Noyes v. Ross, 23 M 425, 59 P 367 (1899).

31-2-340. Defenses, liability, and protection of transferee.

Compiler's Comments

Source: Section 8, Uniform Fraudulent Transfer Act.

Case Notes

DECISIONS PRIOR TO 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Effect of Delivery and Nondelivery of Possession: While title to personal property may pass by bargain and sale without delivery of possession as between the parties to the transaction, as against everyone but the seller, there must be a delivery of the possession. As a general rule, when the same personalty is sold to two different persons by transfer equally valid as between the seller and buyer, he who first lawfully acquires the possession will hold it against the other. Jackson v. McDonald, 115 M 269, 143 P2d 898 (1943).

Supporting Evidence for Findings: In an action to set aside certain conveyances as fraudulent, the evidence showed a close relationship between the interested parties, and their testimony regarding the transactions was vague and uncertain. Under the rule that unless the evidence preponderates against the findings of the jury it will be considered conclusive on appeal, the finding of no consideration for the transfer was supported by the evidence. Stone-Ordean-Wells Co. v. Strong, 94 M 20, 20 P2d 639 (1933).

Transfer Not Fraudulent: Lands alleged to have been conveyed for the purpose of defrauding plaintiff creditor had been purchased by the husband of the defendant more than 20 years before plaintiff secured judgment against her. The lands had been recorded in defendant's name, with the understanding that they should be held by her for the benefit of their children who knew of the arrangement. Defendant transferred the lands to a daughter for the benefit of all the children, without consideration, some 8 months before plaintiff commenced suit on a promissory note. Plaintiff had made no attempt to fix a lien upon the lands under the judgment recovered by him until 1½ years after the conveyance. The trust assumed by the defendant and subsequently discharged by conveyance to the daughter for the benefit of all the children was sufficient to protect the transfer from attack as fraudulent. Nat'l Bank of Anaconda v. Yegen, 83 M 265, 271 P 612 (1928).

Plaintiff to Make Affirmative Showing: Whether lack or gross inadequacy of consideration for the transfer of realty constitutes a badge of fraud depends upon an affirmative showing by plaintiff that the debt owing from the grantor to the creditor attacking the conveyance was in existence prior to the transfer, and that the grantor was insolvent or did not reserve sufficient property to satisfy the debt. Dick v. King, 80 M 40, 257 P 1022 (1927).

Property Must Be Subject to Creditor's Claim: Before a creditor can attack a transfer of property as fraudulent, it is incumbent upon him to show that the property disposed of was such as might otherwise have been subjected to the satisfaction of his claim. Keller v. Flanagan, 66 M 144, 213 P 222 (1923). See also Edenfield v. C.V. Seal Co., Inc., 83 M 49, 270 P 642 (1928).

Execution Against Property: When there has been a sale of personal property not accompanied by an immediate delivery and followed by an actual and continued change of possession, the vendee takes title subject to the claim of the vendor's creditor, who may subject the property to execution. Tetrault v. Ingraham, 54 M 524, 171 P 1148 (1918).

Evidence Not Admissible to Disprove Fraud in Law: In an action in claim and delivery based upon constructive fraud in a sale of personal property under 31-2-315 (now repealed), testimony offered by the buyer that the bill of sale evidencing the transaction had been filed with the county clerk, and that he had made application for insurance on the property in his own name, was properly refused. Taylor v. Malta Mercantile Co., 47 M 342, 132 P 549 (1913).

Creditor Subrogated to Equity of Partner: Defendants, after contracting a debt to plaintiffs for merchandise, executed a chattel mortgage to a third party covering all their property. The right of creditors of a partnership to have partnership debts paid out of partnership property before the debts of an individual partner is not a lien or trust, but is a derivative equity from the partner. This equity can be made effective only through the equity of an individual partner, to which the creditor is subrogated. It follows that if such partner is in no position to enforce his equity a firm creditor cannot. If the property has ceased to belong to the partnership through a bona fide transfer, prior to the interposition of the court, the equities of the partners are extinguished, and consequently the derivative equities of the creditors are ended. It is therefore essential to any preferential right of the creditors that there is property owned by the partnership when the claim for preference is sought to be enforced. Noyes v. Ross, 23 M 425, 59 P 367 (1899).

Joint Owner in Possession: When a joint owner of personal property in the possession of another joint owner sells his interest, the failure of the purchaser to take possession does not, as against execution creditors of the seller, avoid the sale. Yank v. Bordeaux, 23 M 205, 58 P 42 (1899).

31-2-341. Termination of cause of action.

Compiler's Comments

2005 Amendment: Chapter 440 in introductory clause substituted "terminated" for "extinguished"; in (1) substituted "4 years" for "2 years" and "2 years" for "1 year"; in (2) substituted "4 years" for "2 years"; in (3) substituted "2 years" for "1 year"; and made minor changes in style. Amendment effective April 28, 2005.

Source: Section 9, Uniform Fraudulent Transfer Act.

Case Notes

Breakdown of Inquiry as to Whether UFTA Statute of Limitations Applies: In determining whether the statute of limitations in subsection (1) of this section applies, the Supreme Court adopted the following three-step inquiry. (1) Did the creditor bring the claim within 1 year (see 2005 amendment) of discovering or acquiring actual knowledge of the transfer? If the answer is yes, then the creditor's claim may proceed regardless of when the transfer occurred or when or if a judgment was entered. (2) Is the date that the creditor claims discovery of the transfer reasonable? The District Court may invoke its discretion in focusing on how the diligence of the creditor weighs against the stealth of the debtor under the circumstances. If the answer is yes, it would be unreasonable to charge the creditor with knowledge of the transfer beyond 1 year prior to the date of the UFTA claim and the creditor may proceed. If the answer is no and a diligent creditor could and should have discovered the transfer more than 1 year prior to filing the claim, then the inquiry proceeds to the third prong. (3) Did the creditor nevertheless file the UFTA claim within 2 years of the debtor's transfer? (See 2005 amendment.) If the answer is yes, the claim may proceed, but if the answer is no, the claim brought under 31-2-333(1)(a) is barred pursuant to subsection (1) of this section. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

Failure to File Suit Within Statutory Limits Precluding Action Under Uniform Fraudulent Transfer Act: Plaintiff insurers brought an action in 1995 in California federal District Court demanding reimbursement for their performance pursuant to indemnity bond agreements concerning government construction contracts that Clark and other defendants breached. Plaintiffs were awarded default money judgments in 1997 after defendants failed to appear. However, shortly after the action was filed in 1995, Clark recorded five deeds conveying tracts of Montana real property from himself to his corporation. Plaintiffs alleged that the transfers were made with the actual intent to prevent plaintiffs from executing judgment against Clark individually, so in 1999, within 2 years after the federal judgment was entered in their favor, plaintiffs filed a complaint in state District Court in Montana seeking to have Clark's alleged fraudulent conveyances declared void under the Uniform Fraudulent Transfer Act. Clark moved for summary judgment on grounds that the statute of limitations in this section extinguished the fraudulent transfer claim, and the motion was granted under the rationale that a cause of action with respect to a fraudulent transfer must be brought either within 2 years of the transfer itself or within 1 year of the reasonable discovery of the transfer by the claimant. (See 2005 amendment.) Numerous affidavits indicated that plaintiffs were aware that Clark resided in Montana when the original indemnity agreements were entered in 1993 and had used private investigators in 1995 and 1996 to collect information on Clark's whereabouts so that the default judgment could be entered. The District Court found that plaintiffs had missed the deadline requiring filing of a claim within 2 years of transfer and that the deeds could have reasonably been discovered at any time following the date of recording. Plaintiffs appealed, but the Supreme Court affirmed. In this case, the claim that Clark transferred the assets with intent to hinder, delay, or defraud was afforded the more lenient statute of limitations under subsection (1) of this section, so plaintiffs had 2 years after the transfers were made or 1 year after the transfers were discovered or could reasonably have been discovered to file suit. The District Court did not err in concluding that plaintiffs could have reasonably discovered the deed transfers any time after the date of recording. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

Statute of Limitations Under Repealed Uniform Fraudulent Conveyance Act Displaced by Explicit Statute of Limitations in Uniform Fraudulent Transfer Act: Plaintiff insurers argued that a creditor may not assert a claim under the Uniform Fraudulent Transfer Act (UFTA) until after the underlying judgment is entered, citing Murphy v. Atkinson, 262 M 164, 864 P2d 273 (1993). Plaintiffs were correct to the extent that prior to the adoption of UFTA in 1991, the statute of limitations for fraudulent transfers under the now repealed Uniform Fraudulent Conveyance Act was supplied by the general rule for fraud under 27-2-203. However, after adoption of UFTA, Murphy, in conjunction with 27-2-203, was no longer the rule of law, but rather the statute of limitations in this section applied and provided that a judgment in hand is no longer a prerequisite for establishing standing to bring a UFTA claim. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

When Statute of Limitations Affecting Liability for Claim Arising Before Transfer Occurs: Generally, the Uniform Fraudulent Transfer Act (UFTA) addresses transfers of property that have already occurred; however, 31-2-333 and 31-2-334 may establish the liability of a debtor as to a creditor whose claim arose before the transfer occurred, as in this case, if: (1) the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor; (2) the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor was engaged or about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or intended to incur or believed or reasonably should have believed that debts would be incurred beyond the ability to pay as they became due; (3) the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor became insolvent as a result of the transfer; or (4) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent. These actions are subject to the explicit statute of limitations under this section, and the burden of establishing facts necessary to bar a claim under UFTA rests with the debtor. Gulf Ins. Co. v. Clark, 2001 MT 45, 304 M 264, 20 P3d 780 (2001).

31-2-342. Supplementary provisions.

Compiler's Comments

Source: Section 10, Uniform Fraudulent Transfer Act.

Case Notes

DECISIONS PRIOR TO 1991 ENACTMENT OF UNIFORM FRAUDULENT TRANSFER ACT

Transfer of Principal's Assets to Surety — Equitable Duty of Surety to Pay Principal's Obligations: Where the defendant surety company entered into an agreement with its principal requiring the principal to reimburse the defendant for any costs incurred in the bonding of the principal, received assets from its principal that made it impossible for the principal to pay a judgment, and represented the interest of the principal in litigation, the Supreme Court upheld on equitable grounds a District Court judgment against the surety for the obligations of its principal. Even though there was no contractual liability for the surety to pay the precise kind of debts incurred by the principal, the evidence showed an intent that all the principal's obligations be paid by the defendant. Pioneer Concrete & Fuel, Inc. v. Apex Constr., Inc., 204 M 387, 664 P2d 938, 40 St. Rep. 956 (1983).

CHAPTER 3

RELATED CREDIT PRACTICES

Part 1

Consumer Reporting Agencies

Part Compiler's Comments

Severability Clause: Section 22, Ch. 547, L. 1975, read: "The provisions of this act are severable and if any part or provision thereof shall be held void, the decisions of the court so holding shall not affect or impair any of the remaining part or provisions of this act."

Part Law Review Articles

Recent Developments in Business Law, Morton & Barber, 39 Mont. L. Rev. 53 (1978).

31-3-102. Definitions and rules of construction.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-3-113. Disclosure of investigative consumer reports.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-3-114. Compliance procedures.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-3-115. Adverse information.

Compiler's Comments

2005 Amendment: Chapter 518 inserted (2) relating to blocking information resulting from alleged identity theft; and made minor changes in style. Amendment effective April 28, 2005.

Severability: Section 11, Ch. 518, L. 2005, was a severability clause.

31-3-121. Disclosures to governmental agencies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

31-3-123. Conditions of disclosure to consumer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-3-125. Fees for disclosures to consumers.

Compiler's Comments

2001 Amendment: Chapter 483 near end after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Administrative Rules

ARM 23.19.301 Disclosure fees.

31-3-126. Public record information for employment purposes.

Case Notes

Criminal Record: A credit reporting agency may lawfully report the record of an arrest or indictment and judgment or acquittal. The fact that a conviction has been set aside does not alter the fact of the crime or the defendant's guilty plea to it. It does not affect the right to report facts shown by public records. The reporting of such facts was not against public policy and was not prohibited by either the Fair Credit Reporting Act or the Youth Corrections Act. Fite v. Retail Credit Co., 386 F. Supp. 1045 (D.C. Mont. 1975), affirmed 537 F2d 384 (9th Cir. 1976).

31-3-131. Requirements on users of consumer reports.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

31-3-132. Block of information on credit report.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

31-3-141. Actions available to consumer.

Compiler's Comments

1995 Amendment: Chapter 546 in (3) and (4) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (3) and (4) changed references to Department of Revenue to references to Department of Social and Rehabilitation Services; and made minor changes in style.

1989 Amendment: In (3), after "person", excepted Department of Revenue and before "furnishes the information with malice" inserted "any person who"; and inserted (4) relating to petition for administrative hearing.

31-3-151. Jurisdiction — venue.

Compiler's Comments

1989 Amendment: Inserted exception clause relating to disputes concerning information made available to consumer reporting agencies.

31-3-152. Rules.

Compiler's Comments

2001 Amendment: Chapter 483 after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1989 Amendment: In two places deleted reference to 31-3-127.

1985 Amendment: In two places inserted exception clause referring to 31-3-127.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Administrative Rules
ARM 23.19.301 Disclosure fees.

31-3-153. Violation.

Administrative Rules
ARM 23.19.301 Disclosure fees.

CHAPTER 4
LITIGATION FINANCING

Part 1
Litigation Financing Transparency and Consumer Protection Act

Part Compiler's Comments

Effective Date: Section 14, Ch. 360, L. 2023, provided that this part is effective January 1, 2024.

Applicability: Section 15, Ch. 360, L. 2023, provided: "[This act] applies to any civil action or administrative proceeding pending on or commenced after [the effective date of this act]." Effective January 1, 2024.

Severability: Section 13, Ch. 360, L. 2023, was a severability clause.

TITLE 32
FINANCIAL INSTITUTIONS

Title Case Notes

IRS Form 1099-C — Not Discharge of Debt — Creditor Still Able to Collect: The Supreme Court adopted the majority position regarding the purpose of the Form 1099-C and held that the issuance of an IRS Form 1099-C is not prima facie evidence of a creditor's intent to discharge a debt; rather, it is a means of satisfying the agency's reporting requirements and does not, in and of itself, prevent a creditor from seeking collection of a debt. Flathead Bank of Bigfork v. Masonry by Muller, Inc., 2016 MT 269, 385 Mont. 214, 383 P.3d 215.

CHAPTER 1
BANKS AND TRUST COMPANIES

Chapter Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 395, L. 1993, provided: "A statement of intent is required for this bill because the bill gives the department of commerce [now department of administration] authority to adopt administrative rules to implement the purposes of the banking laws. The banking and financial division, in consultation with the state banking board, should adopt rules that allow state-chartered banks to operate efficiently and in conformity with the standards and procedures governing national banks. The department shall also adopt rules governing the combination of obligations for lending limit calculation purposes. The rules should address the purpose of the loan, the ultimate common user of funds, the source of repayment, the percentage of ownership, and other relevant considerations.

The rules on loan limitations may include limits or requirements for particular classes or categories of loans or extensions of credit, including a rule governing the combination of obligations for lending limit calculation purposes. These rules may address the purpose of the loan, the ultimate user of the funds, the source of repayment, the percentage of ownership of the entity, and other relevant considerations. The department may determine when a loan putatively made to a person is attributable to another."

Chapter Administrative Rules

Title 2, chapter 59, ARM Banking and financial institutions.

Title 2, chapter 60, ARM State Banking Board.

Part 1
General Provisions — Definitions

32-1-101. Short title — application — purpose.

Compiler's Comments

2005 Amendment: Chapter 163 deleted former (1)(d) that read: "(d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign Capital Depository Act, chapter 8, specifically require foreign capital depositories to be subject to the provisions of the Bank Act"; and made minor changes in style. Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 inserted (2)(d) regarding foreign capital depositories; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

1993 Amendment: Chapter 395 in (2)(b), after "themselves to", deleted "special provisions and sections"; inserted (3) establishing the purposes and standards of the Bank Act; and made minor changes in style.

32-1-102. Institutions to which chapter is applicable.

Compiler's Comments

2013 Amendment: Chapter 264 inserted (5)(c) regarding nonprofit corporation serving as trustee; and made minor changes in style. Amendment effective October 1, 2013.

Severability: Section 161, Ch. 264, L. 2013, was a severability clause.

2005 Amendment: Chapter 163 in (1) near middle after "corporation" deleted "other than a foreign capital depository, as defined in 32-8-103"; in (2) in first sentence near middle after "business" deleted "except for the operations of a foreign capital depository"; deleted former (6) that read: "(6) Except for the provisions listed in 32-8-106, this chapter does not apply to foreign capital depositories"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 340 inserted (7) exempting student financial institutions from chapter. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 7, Ch. 340, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to a school financial institution opened on or after July 1, 2003."

1997 Amendment: Chapter 382 in (1), near beginning after "corporation", inserted "other than a foreign capital depository, as defined in 32-8-103"; in (2), near middle of first sentence after "business", inserted "except for the operation of a foreign capital depository"; inserted (6) providing that, with listed statutory exceptions, chapter 1 does not apply to foreign capital depositories; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

Case Notes

Effect of Incorporation: A corporation which applied to the Montana Superintendent of Banks (now State Banking Board) for an authorization became a bank the date on which the application was granted by the Superintendent although it did not commence a banking business until later. First Nat'l Bank in Billings v. First Bank Stock Corp., 197 F. Supp. 417 (D.C. Mont. 1961), affirmed in 306 F2d 937 (9th Cir. 1962).

32-1-104. Number of persons necessary to form corporation.

Compiler's Comments

1997 Amendment: Chapter 117 near middle, after "persons", substituted "or by a corporation or other entity authorized to own or control banks and organized" for "not less than three"; and after "chapter" deleted "and not otherwise, any one or more or all of". Amendment effective March 20, 1997.

32-1-105. Commercial bank defined.

Compiler's Comments

1999 Amendment: Chapter 100 in (4) substituted "engage in business activities directly or indirectly through affiliates or subsidiaries" for "sell credit life and disability insurance on loans to its borrowers"; and made minor changes in style. Amendment effective October 1, 1999.

1981 Amendment: Added (4) relating to the sale of credit life and disability insurance.

Attorney General's Opinions

Direct Marketing of Fixed Annuities by State-Chartered Bank — When Allowed: Notwithstanding the list of permissible activities in this section, a state-chartered bank may, with consent of the Department of Commerce and pursuant to 32-1-362, directly market fixed annuities or engage in any other activity permitted national banks as long as no state statute expressly prohibits that activity. 43 A.G. Op. 76 (1990).

32-1-106. Savings bank defined.

Compiler's Comments

1981 Amendment: Added (3) relating to the sale of credit life and disability insurance.

32-1-107. Trust company defined — purposes for which may be formed.

Compiler's Comments

2021 Amendment: Chapter 325 in (5) and (6) at beginning inserted exception clause. Amendment effective October 1, 2021.

1989 Amendment: Near beginning of (8)(a), after "other bonds", inserted the remainder of (8)(a), (8)(a)(i), and (8)(a)(ii) regarding investment in United States government obligations; and made minor changes in phraseology.

Case Notes

Interest Rate by Trust Agreement Not Creative of Debtor and Creditor Relationship — Preference on Insolvency of Bank: A state bank exercising the powers of a trust company has specific authority to receive money in trust and may allow an agreed rate of interest thereon. A deposit of money in trust with a provision in the trust agreement that interest at a certain rate should be paid thereon to the trustee did not create the relation of debtor and creditor. Trust fund was entitled to preference. Conley v. Johnson, 101 M 376, 54 P2d 585 (1936).

32-1-109. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 23, L. 2023. Amendment effective February 28, 2023.

2019 Amendment: Chapter 75 inserted definitions of acquiring party, loan production office, regional banking organization, service provider, and tier 1 leverage ratio; in definition of bank holding company following "regardless of where" substituted "the entity" for "it"; in definition of branch in introductory clause after "Branch" deleted "bank" and in (a) at beginning inserted "in the case of a bank" and in last sentence clarified that the term "branch" includes a loan production office; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 49 inserted definitions of acquire, control, doing business in the state, headquarters, and located in this state; in definition of bank holding company inserted "regardless of where it is located or has its headquarters"; in definition of branch bank in (a) inserted "under 12 U.S.C. 1828"; in definition of main banking house after "bank" deleted "in the state"; and made minor changes in style. Amendment effective October 1, 2013.

2001 Amendments — Composite Section: Chapter 36 in definition of bank holding company inserted "or a financial holding company". Amendment effective March 13, 2001.

Chapter 483 in definition of department substituted reference to department of administration for reference to department of commerce and substituted "part 10" for "part 18". Amendment effective July 1, 2001.

1999 Amendment: Chapter 100 inserted definition of subsidiary; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 117 inserted definitions of affiliate, depository institution, insured depository institution, savings association, and shell bank; in definition of branch bank, in (a) after "state", inserted "and at which deposits are received, checks are paid, or money is lent", after "include" deleted "a detached facility, as provided for in 32-1-372, or", at end inserted "or the office of an affiliated depository institution acting as an agent", and inserted (b) concerning trust company; deleted definition of city that read: ""City" means a city, town, or municipality, incorporated or unincorporated, that is an aggregation of inhabitants and structures sufficient to constitute a distinct place"; deleted definition of city limits that read: ""City limits" means, in the case of:

(a) an incorporated city, the corporate limits as provided for in 7-2-4101; or

(b) an unincorporated place, the boundaries that under the circumstances define the city as a distinct place"; deleted definition of common ownership that read: ""Common ownership" means the ownership, directly or indirectly, of 80% or more of the voting stock of each of two or more banks by an individual, group of individuals, entity, or corporation"; deleted definition of community advisory board that read: ""Community advisory board" means a group of citizens to advise the management of a branch bank, a majority of whom must be residents of the county in which the branch bank is located"; in definition of main banking house, after "means the", inserted "designated"; and made minor changes in style. Amendment effective March 20, 1997.

1993 Amendment: Chapter 395 at beginning inserted "As used in this chapter"; and inserted definitions of bank holding company, Division, and principal shareholder.

1989 Amendment: Inserted definitions of branch bank, city, city limits, common ownership, community advisory board, and main banking house. Amendment effective January 1, 1990.

1985 Amendment: In (9) substituted "7 days" for "14 days".

1983 Amendment: In (9), substituted "14 days" for "30 days".

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (5).

32-1-112. Applicability of corporation law.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 23, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 271 in (1) in two places substituted "Title 35, chapter 14" for "Title 35, chapter 1"; in (2) near beginning substituted "35-14-301, 35-14-302(4) through (10), 35-14-401(1), 35-14-621(2), Title 35, chapter 14, part 14, 35-14-1601, and 35-14-1602" for "35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, and Title 35, chapter 1, part 10"; and made minor changes in style. Amendment effective June 1, 2020.

2005 Amendment: Chapter 71 in (2) after "35-1-1107" deleted "35-1-1207"; and made minor changes in style. Amendment effective October 1, 2005.

32-1-115. Student financial institution defined — obligations of minor — applicability of laws.

Compiler's Comments

2019 Amendment: Chapter 75 inserted (1)(a) concerning the location of a student financial institution; in (1)(b) substituted "is operated as a financial literacy educational program" for "is adopted by a school district board of trustees"; in (1)(c) at beginning substituted "is operated" for "is advised by but not owned"; substituted current (1)(d) concerning services to the general public and current (1)(e) concerning the manner in which each program is conducted for former (1)(d), (1)(e), and (1)(f) that read: "(d) is located on property owned by a high school district, as defined in 20-6-101, or a K-12 school district, as defined in 20-6-701;

(e) has as its customers only those students who are enrolled in the high school in which the institution is located; and

(f) has a written commitment from the school district board of trustees guaranteeing reimbursement of any depositor's funds that are lost due to insolvency of the student financial institution"; in (2) at beginning substituted "To operate" for "To advise" and at end after "department" deleted "of administration"; deleted former (2) that read: "(2) The funds of a student financial institution are not school district or public funds for the purposes of any state law governing the use or investment of school district or other public funds"; inserted (3) clarifying that a branch application is unnecessary; in (5) clarified that only the provisions of 32-1-102, 32-1-402, 32-3-106, and this section apply to a student financial institution, and not other provisions of Title 32, chapters 1 through 3, or other provisions of state law; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date — Applicability: Section 7, Ch. 340, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to a school financial institution opened on or after July 1, 2003."

Source: This section is based on North Dakota statutes 6-01.17.1 and 15-29-08 (now repealed) (Senate Bill No. 2231, L. 1999).

Part 2
State-Chartered Banks and Functions of Department of Administration

Part Compiler's Comments

Applicability Clause: Section 9, Ch. 420, L. 1973, read: "The provisions of this act shall not apply to any application filed prior to January 1, 1973."

Part Case Notes

Statute Satisfied: The State Banking Board and the District Court were not in error in finding that an application as filed satisfied the requirements of the regulations, even though it lacked information, since such evidence was presented at a hearing. W. Bank of Billings v. St. Banking Bd., 174 M 331, 570 P2d 1115 (1977).

Due Process: Protestant bank has no statutory right to a hearing or to an adversary, trial-type hearing with an opportunity to examine and cross-examine witnesses or to elicit disclosure of confidential information from the Superintendent of Banks (now State Banking Board) so that it might have an opportunity to answer in proceeding when Superintendent of Banks (now State Banking Board) conditionally approves a state bank charter application based on confidential information. Miners & Merchants Bank v. Dowdall, 158 M 142, 489 P2d 1274 (1971). Decision prior to enactment of 32-1-204 (now repealed).

32-1-211. Examination and supervision by department — division of banking and financial institutions — commissioner — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 23, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 75 inserted (1)(b) concerning investigating the methods of operation and conduct of business of the banks and trust companies; deleted former (3) that read: "(3) The department shall investigate the methods of operation and conduct of business of the banks and trust companies and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles"; inserted (3) regarding the department accepting the findings or results of an examination of a bank, trust company, or service provider; inserted (4) clarifying that performance of services for a depository institution by contract or otherwise is subject to regulation and examination to the same extent as if the services were performed by the depository institution itself; inserted (5) to allow the department to enter into agreements, engage and provide services, and disclose information; in (6) at beginning inserted introductory clause; deleted former (9) that read: "(9) The commissioner may accept as the examination required by this section the findings or results of an examination of a bank or trust company that was made by a regulatory or insuring agency of the United States authorized to make the examination"; inserted (11) granting rulemaking authority; and made minor changes in style. Amendment effective October 1, 2019.

1993 Amendment: Chapter 395 throughout section, after "bank" or "banks", inserted reference to trust company or trust companies; in (2), at beginning, inserted exception clause; in (2)(a) reduced examination period from 30 months to 24 months; in (2)(b) reduced report time from 120 days to 60 days; inserted (8) creating Division of Banking and Financial Institutions and establishing Commissioner of Banking and Financial Institutions as head of Division; inserted (9) authorizing Commissioner to accept results of bank or trust company examination made by regulatory or insuring agency as required examination; and made minor changes in style.

1989 Amendment: Inserted (2)(b) requiring submission of a written report within 120 days after examination; and made minor changes in phraseology. Amendment effective March 21, 1989.

1987 Amendment: In (2) extended time for examinations from once a year to once every 30 months.

Administrative Rules

ARM 2.59.115 Adoption of examination procedure.

32-1-212. Conflicts of interest — definition — rulemaking.

Compiler's Comments

2019 Amendment: Chapter 75 in (1) substituted current text for former text that read: "A bank examiner may not be, directly or indirectly, interested in or a borrower from any bank organized under the laws of this state"; inserted (2) and (3) concerning extensions of credit; inserted (4) granting rulemaking authority; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 49 at end substituted "bank organized under the laws of this state" for "state bank"; and made minor changes in style. Amendment effective October 1, 2013.

2001 Amendment: Chapter 483 at beginning deleted "Neither the director of the department of commerce nor" and after "may" inserted "not"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

32-1-213. Payments to be made by banks, investment companies, and trust companies.

Compiler's Comments

1997 Amendment: Chapter 117 at beginning of first sentence deleted "On or before January 31 and July 31 of each year", after "department" deleted "a semiannual assessment fee", and after "set" inserted "by the department by rule" and near beginning of second sentence substituted "may amend the rule setting the fees" for "shall establish such assessment fee by rule" and after "June 1" inserted "and December 1"; deleted (2) that read: "(2) In addition to the above assessment, trust companies shall pay to the department an examination fee of $200 per day for each examiner involved in examining the trust assets under the control, safekeeping, or fiduciary responsibility of the trust company. Such fees shall be deposited by the department in the state special revenue fund for the use of the department in its examination function"; and made minor changes in style. Amendment effective March 20, 1997.

1985 Amendment: In (1) in second sentence substituted "all of the costs" for "80% of the costs"; and at end of (1) and (2) substituted "the state special revenue fund for the use of the department in its examination function" for "the general fund".

1983 Amendment: Substituted (1) and (2) (see 1983 Session Law) for former section, which read: "For the credit of the general fund of the state, each bank, trust company, or investment company under the supervision of the department shall pay to the state treasurer, on or before June 30 of each year, a supervision fee of $400. An examination fee of 12 cents for each $1,000 of total assets as of the date of the examination shall be paid at the conclusion of the examination."

Statement of Intent: The statement of intent attached to HB 701 (Ch. 507, L. 1983) provided: "A statement of intent is required for [this bill] because it grants rulemaking authority to the department of commerce [now department of administration] to set assessments for state banks, trust companies, and investment companies.

It is the intention of the legislature that in the promulgation of the rules, the department will conduct hearings in an attempt to assure that the affected institutions will have the opportunity to voice their views. It is the intention of the legislature that the department should attempt to create rules for assessment which provide equitable treatment of institutions insofar as possible, while maintaining the mandate of the bill."

Administrative Rules

ARM 2.59.104 Semiannual assessment.

32-1-215. Special examinations and fees — report within 120 days.

Compiler's Comments

1989 Amendment: At end of first sentence substituted "rate that equals the department's actual costs for examiner wages and travel expenses" for "rate of $100 a day for each person engaged in the examination"; inserted last sentence requiring submission of a written report within 120 days after examination; and made minor change in phraseology. Amendment effective March 21, 1989.

1985 Amendment: At end of section, after "credit of", substituted "the state special revenue fund for the use of the department in its examination function" for "the general fund".

32-1-218. Department to make rules.

Compiler's Comments

1997 Amendment: Chapter 117 in (2), near end after "companies", deleted "shall"; inserted (3) concerning rules relating to applications; and made minor changes in style. Amendment effective March 20, 1997.

1993 Amendment: Chapter 395 in two places in (2), after "banks", inserted "and trust companies"; and inserted (3) authorizing Department to implement chapter purposes.

1993 Statement of Intent: The statement of intent attached to Ch. 395, L. 1993, provided: "A statement of intent is required for this bill because the bill gives the department of commerce [now department of administration] authority to adopt administrative rules to implement the purposes of the banking laws. The banking and financial division, in consultation with the state banking board, should adopt rules that allow state-chartered banks to operate efficiently and in conformity with the standards and procedures governing national banks. The department shall also adopt rules governing the combination of obligations for lending limit calculation purposes. The rules should address the purpose of the loan, the ultimate common user of funds, the source of repayment, the percentage of ownership, and other relevant considerations.

The rules on loan limitations may include limits or requirements for particular classes or categories of loans or extensions of credit, including a rule governing the combination of obligations for lending limit calculation purposes. These rules may address the purpose of the loan, the ultimate user of the funds, the source of repayment, the percentage of ownership of the entity, and other relevant considerations. The department may determine when a loan putatively made to a person is attributable to another."

Administrative Rules

Title 2, chapter 59, ARM Banking and financial institutions.

32-1-220. Access to holding companies and affiliated entities.

Compiler's Comments

2011 Amendment: Chapter 49 at end after "during the course of a" substituted language concerning a bank holding company's subsidiary bank records regarding financial condition and subsidiary's indebtedness for "regularly scheduled safety and soundness examination whenever serious regulatory concerns arise that could jeopardize the safety and soundness of the particular subsidiary being examined. The purpose of the authority granted in this section is to resolve serious regulatory concerns that arise during the examination from bank holding company transactions with the subsidiary being examined. The authority granted in this section does not authorize a review of the holding company as a standard procedure when the division has no serious regulatory concerns over transactions with the subsidiary being examined." Amendment effective October 1, 2011.

1997 Amendment: Chapter 148 at beginning of first sentence substituted "The division may review the books and affairs of a bank holding company operating under" for "The division shall request assistance from and cooperate with the federal reserve system in the examination of bank holding companies under" and at end, after "1956", substituted "during the course of a regularly scheduled safety and soundness examination whenever serious regulatory concerns arise that could jeopardize the safety and soundness of the particular subsidiary being examined" for "in order to resolve issues relating to the safety and soundness of banks under the jurisdiction of the division"; and inserted second and third sentences referring to the purpose of and limitations on authority granted to Division to review books and affairs of bank holding companies.

32-1-221. Regional banking organizations — department authority.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

32-1-222. Loan production office — rulemaking authority.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 23, L. 2023. Amendment effective October 1, 2023.

Effective Date: This section is effective October 1, 2019.

32-1-231. Reports to department.

Compiler's Comments

2015 Amendment: Chapter 12 in (2) and (3) near beginning substituted "call report" for "report"; deleted former (1) that read: "(1) The department shall call for the reports specified in this section at least three times each year"; in (1) near beginning inserted "at least three times each year"; in (3) in first sentence substituted "past day specified under subsection (2)" for "receipt of a request or requisition for it and must be in a form that the department may require" and inserted last three sentences regarding electronic transmittal of a call report, retention of an original signature page, and transmission of a hard copy or imaged form of a call report for certain trust companies; and made minor changes in style. Amendment effective October 1, 2015.

Repeal of Contingent Termination: Section 2, Ch. 64, L. 1995, which established a contingent termination date for 32-1-231, was repealed by sec. 84(2), Ch. 7, L. 2001.

1995 Amendment: Chapter 64 in temporary version in (4) deleted second and third sentences that read: "It shall be published as soon as possible at the expense of the bank in a newspaper published in the place where the bank is established or, if there be no newspaper in the place, then in one published nearest to that place in the same county. Proof of the publication shall be furnished at the times and in the manner as may be required by the department"; and made minor changes in style.

Contingent Termination: Section 2, Ch. 64, L. 1995, provided: "[This act] terminates on the date that the commissioner of financial institutions certifies to the governor that federal banking laws require that a nationally chartered bank publish its call report in a newspaper published in the place where the bank is located."

1985 Amendment: In (4) increased time limit for submission by banks of call reports from 5 to 30 days.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

32-1-232. Report of declaration of dividend.

Compiler's Comments

2019 Amendment: Chapter 75 in first sentence substituted "30" for "10"; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 12 near beginning substituted "call report" for "report". Amendment effective October 1, 2015.

32-1-233. Special reports to department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 23, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 12 near beginning substituted "call report" for "report". Amendment effective October 1, 2015.

32-1-234. Confidentiality — penalties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 23, L. 2023. Amendment effective October 1, 2023.

2019 Amendments — Composite Section: Chapter 68 in (1)(b) inserted second sentence relating to the department furnishing examination reports. Amendment effective October 1, 2019.

Chapter 75 in (1)(a) in first sentence inserted reference to 32-1-221; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 12 in (1)(a) substituted current text concerning confidentiality for former (1)(a) that read: "(1) (a) The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, must be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information contained in the reports and statements may be used by the department only in the furtherance of its official duties"; and made minor changes in style. Amendment effective October 1, 2015.

1993 Amendment: Chapter 395 near end of (1), before "be used by", substituted "may" for "shall"; in first sentence of (1)(b), after "federal", substituted "financial institution regulatory agencies" for "banking departments" and before "departments" inserted "the financial regulatory", in second sentence, after "auditor", deleted "or prosecuting officials who request it", and inserted last sentence authorizing prosecuting official to obtain information by court order; in (2) substituted "subsection (1)(b)" for "this subsection" and at end deleted former exception clause concerning exchange of information with federal or state agencies and prosecuting officials; in (3), in second sentence after "fined", inserted "an amount" and after "state" substituted "correctional facility for a term" for "penitentiary"; and made minor changes in style.

Case Notes

Purpose of Section: The purpose of this section is to ensure the securing of necessary and pertinent information by the Superintendent of Banks (now Department of Administration) in discharge of his official duties, and such purpose is reasonable. Miners & Merchants Bank v. Dowdall, 158 M 142, 489 P2d 1274 (1971).

Scope and Nature of Information: This section requires confidentiality of information secured in determination of bank charter applications and does not confine it to information required in the supervision, audit, and examination of existing banks. Miners & Merchants Bank v. Dowdall, 158 M 142, 489 P2d 1274 (1971).

32-1-236. False statements and entries considered felony.

Compiler's Comments

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Case Notes

Procedurally Improper and Unsubstantiated Claim of Bank Alteration of Records: In an attorney's action against a bank for breach of a covenant of good faith and fair dealing, the attorney filed a motion for summary judgment in which he for the first time claimed that the bank had altered his banking records and that the alterations made it liable as a matter of law and precluded summary judgment for the bank. He presented no evidence of alteration, did not modify his complaint to add the alteration claim, attempted to have his expert on the alleged alteration added to the witness list a month after the deadline for presentation of expert witness lists, and submitted, on appeal, letters from his expert that were not part of the record below. He presented no legal authority under which the bank's alleged actions and manner of keeping his records were illegal. It was not error to deny his motion. Cate v. First Bank (N.A.)-Billings, 262 M 429, 865 P2d 277, 50 St. Rep. 1624 (1993).

Intent to Deceive: In a prosecution against the cashier of a state bank under section 6077, R.C.M. 1921 (now repealed), for knowingly exhibiting or subscribing false papers, with the intent to deceive the State Bank Examiner, it is essential to prove beyond a doubt the intent to deceive. St. v. Asal, 79 M 385, 256 P 1071 (1927). See also St. v. Arnot, 79 M 417, 256 P 1082 (1927).

Director's Duty to Report: The "making" of a report by a state bank to the Superintendent of Banks (now Department of Administration) as required by section 6071, R.C.M. 1921 (now repealed), comprehended any acts necessary to effectuate the purpose of the requirement. The attestation by a director is essential to the completion thereof and to that extent imposes upon him the duty of making the report. By attesting to the report he vouches for the absolute truthfulness of the report. An indictment charging him with a violation of the statute in so making a false report states a public offense. In re Lockhart, 72 M 136, 232 P 183 (1924).

32-1-240. Application to organize bank — rulemaking.

Compiler's Comments

Effective Date: Section 30, Ch. 23, L. 2023, provided that this section is effective October 1, 2023.

32-1-241. Authority to require additional investigatory information — fingerprinting.

Compiler's Comments

Effective Date: Section 30, Ch. 23, L. 2023, provided that this section is effective October 1, 2023.

32-1-242. Department to review application.

Compiler's Comments

Effective Date: Section 30, Ch. 23, L. 2023, provided that this section is effective October 1, 2023.

32-1-243. Commissioner grants or denies application.

Compiler's Comments

Effective Date: Section 30, Ch. 23, L. 2023, provided that this section is effective October 1, 2023.

32-1-244. Grounds for refusing application to organize.

Compiler's Comments

Effective Date: Section 30, Ch. 23, L. 2023, provided that this section is effective October 1, 2023.

32-1-245. Additional requirements after approval of application.

Compiler's Comments

Effective Date: Section 30, Ch. 23, L. 2023, provided that this section is effective October 1, 2023.

32-1-246. Shell bank.

Compiler's Comments

Effective Date: Section 30, Ch. 23, L. 2023, provided that this section is effective October 1, 2023.

Part 3
Formation and Reorganization

Part Administrative Rules

Title 2, chapter 59, subchapter 11, ARM Establishment of new branches.

Part Case Notes

DECISIONS UNDER FORMER LAW

Approval of Application: A corporation which applies to the Montana Superintendent of Banks (now State Banking Board) for an authorization becomes a bank when the application is granted by the Superintendent. First Nat'l Bank in Billings v. First Bank Stock Corp., 197 F. Supp. 417 (D.C. Mont. 1961), affirmed in 306 F2d 937 (9th Cir. 1962).

Liability in Case of Transfer — National Bank: A stockholder in a national bank transferring stock within 60 days prior to the failure of the bank is in the same position, so far as his statutory liability is concerned, as though no transfer had been made. Fed. Deposit Ins. Corp. v. Peterson, 104 M 447, 67 P2d 305 (1937).

Liability for Torts Excluded: The word "debts" cannot be extended to a liability for a tort even though the claim be reduced to judgment. Capital Nat'l Bank of St. Paul v. Bartley, 101 M 591, 56 P2d 728 (1936).

Name on Stock Register: The presumption of liability for an assessment of shares of stock in an insolvent bank arising from the presence of a person's name on its stock register is rebutted by evidence that a bona fide transfer of the stock was made and that the transferor performed every duty imposed by law to secure the transfer on the bank's stock registry. Mitchell v. Banking Corp., 95 M 9, 23 P2d 978 (1933).

Pledgee Not Liable as Holder: A holder of stock in a state bank pledged it to a bank as collateral security for a loan. The pledgee bank forwarded the certificate evidencing the stock to the bank which issued it, with the request that a new certificate be issued to the pledgee although the stock belonged to the pledgor. This was done by the issuing bank. No entry appeared on the books of the issuing bank that the stock was being held by the pledgee bank other than as an absolute owner. Under this section, unqualifiedly exempting pledgees of state bank stock from the stockholder's liability, the trial court properly held that the pledgee bank was not liable as a holder of the stock. Mitchell v. Banking Corp. of Mont., 95 M 23, 24 P2d 124 (1933).

Interest on Claim: When a creditor of an insolvent bank is forced to bring suit to enforce the statutory liability of a stockholder, he is entitled to interest on his claim from the time of the commencement of the action. This is true even though the interest, when added to the principal, exceeds the amount of liability fixed by statute. Mitchell v. Banking Corp. of Mont., 94 M 165, 22 P2d 175 (1933).

Distribution of Assets of Insolvent Bank: There was nothing in the language of 32-1-333 (now repealed) amendatory of section 6036, R.C.M. 1921 (since repealed), relating to the distribution of the assets of an insolvent bank to its creditors, indicative of a clear legislative intent to change its substance. The section was but declaratory of the law as found in section 6036, R.C.M. 1921 (since repealed), and as construed in this case, that the assets must be distributed ratably under the rule that "equity is equality". State ex rel. Rankin v. Wibaux County Bank, 85 M 532, 281 P 341 (1929).

Compliance With Statute as Condition Precedent: An attempted reduction of capital stock of a state bank was rendered ineffectual under section 6033, R.C.M. 1921 (now repealed). The filed certificate of the proceedings of the stockholders' meeting at which the reduction was voted did not state the whole amount of the debts and liabilities of the bank, and the chairman neither certified nor acknowledged such certificate. Compliance with the requirements of the law prescribing the steps necessary to effectuate a reduction is a condition precedent to reduction. Mitchell v. Banking Corp. of Mont., 83 M 581, 273 P 1055 (1929).

When Stockholders' Liability Enforceable: When an insolvent state bank is shown not to have any assets, a creditor may proceed against the stockholders on their statutory liability without first bringing an action against the corporation to determine that it is without assets from which his claim might be satisfied. Brown v. Roberts, 78 M 301, 254 P 419 (1927).

Liability as Guaranty: The double liability to creditors imposed upon the stockholders of an insolvent state bank by section 6036, R.C.M. 1921 (now repealed), is in the nature of a guaranty. It will not support an attachment as upon a contract for the direct payment of money in an action by the receiver to collect an assessment levied upon the stock of a delinquent stockholder. Muri v. Young, 75 M 213, 245 P 956 (1926).

Method of Enforcing Liability: The holder of bank stock has no vested right in any particular method or procedure for enforcing his liability. He cannot object to the adoption of a new method for enforcing it. Under Ch. 9, L. 1923 (now repealed), which was passed after the bank became insolvent, the receiver could commence an action against the stockholders instead of the creditors. This did not prejudice the stockholder in any of his rights. Springhorn v. Dirks, 72 M 121, 231 P 912 (1924).

Stockholder as Creditor: When a stockholder in a banking or trust corporation is also its creditor, he cannot have his claim set off against his stockholder's liability. He must discharge his liability and then proceed to recover on his claim as other creditors are required to. Barth v. Pock, 51 M 418, 155 P 282 (1915).

32-1-301. Organization and incorporation — articles of incorporation.

Compiler's Comments

2023 Amendments- Composite Section: Section 15, Ch. 23, L. 2023, in (1) in first sentence before "may file the articles" inserted "the department"; in (4) near middle after "obtained a certificate from" substituted "the department" for "the board"; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 415, L. 2023, in (1)(d) near end substituted "those initially agreed on" for "those agreed upon for the first year". Amendment effective May 3, 2023.

2019 Amendment: Chapter 271 in (1) in first sentence near end substituted "Title 35, chapter 14" for "Title 35, chapter 1"; in (1)(a) substituted "35-14-202(1)" for "35-1-216(1)"; in (2) at end substituted "35-14-202(2)" for "35-1-216(2)"; in (3) at end substituted "35-14-401(2) through (4)" for "35-1-308(2) through (4)"; and made minor changes in style. Amendment effective June 1, 2020.

2005 Amendment: Chapter 163 throughout section after "corporation" deleted reference to foreign capital depository; and in (3) near middle after "association" deleted "or foreign capital depository". Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 throughout section, in nine places, inserted reference to foreign capital depository.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

1993 Amendment: Chapter 395 at beginning of (1) substituted "A person desiring to organize a banking corporation shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth" for "Any three or more persons desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this chapter shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement which shall set forth"; in (1)(a) substituted "the information required by 35-1-216(1)" for former language that read: "the corporate name of the proposed corporation, which may not be the name of any other corporation granted and then doing business of a similar character in this state or any imitation of a name, provided that it is lawful to use the name used by any corporation previously incorporated and doing business in the state of Montana but which has been disincorporated, liquidated, dissolved, and is entirely out of business. A banking corporation may not adopt or use the name of any other banking corporation or association, or of any friendly association"; deleted former (1)(c) that read: "the amount of the capital stock of the corporation, the number of shares into which it is to be divided, and the par value of shares; the amount of capital stock actually subscribed in good faith at the time of the signing of the articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody of some banking institution designated as the depository of the money until the proposed corporation is fully organized and authorized to engage in business"; in (1)(c), before "shareholders", substituted "initial" for "several"; in (1)(d) deleted second sentence that read: "The articles may provide that the number of directors elected at each annual meeting shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders"; in (1)(e), before "is formed", substituted "banking corporation" for "association or company"; in (2), near beginning, substituted "in subsection (1)" for "therein" and at end, after "provisions", substituted reference to 35-1-216(2) for "not inconsistent with law regarding the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:

(a) for breach of a director's duty of loyalty to a corporation or its shareholders;

(b) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law; or

(c) for a transaction from which a director derives an improper personal benefit"; inserted (3) prohibiting banking corporation from adopting name of another corporation or association; inserted (4) prohibiting banking corporation from incorporating until submission of articles to Department or until certificate of authorization is obtained; inserted (5) prohibiting banking corporation from amending or restating articles until articles of amendment or restatement are approved by Department; inserted (6) providing that articles of agreement are articles of incorporation for banks organized before October 1, 1993; and made minor changes in style.

1989 Amendment: Inserted (2) relating to limitation of Director's personal liability; and made minor changes in form and phraseology. Amendment effective March 23, 1989.

Applicability: Section 3(2), Ch. 278, L. 1989, provided: "[This act] applies to acts and omissions occurring after the effective date of [this act]." Effective March 23, 1989.

1985 Amendment: In (5) after "annual meeting" and after "not exceeding two", deleted "within the limits specified in this chapter".

32-1-302. Incorporation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 23, L. 2023. Amendment effective October 1, 2023.

1993 Amendment: Chapter 395 in three places substituted reference to articles of incorporation for "articles of agreement"; and made minor changes in style.

Case Notes

Due Process: Protestant bank has no statutory right to a hearing or to an adversary, trial-type hearing with an opportunity to examine and cross-examine witnesses or to elicit disclosure of confidential information from the Superintendent of Banks (now Department of Administration) so that it might have an opportunity to answer in proceeding when Superintendent of Banks (now Department of Administration) conditionally approves a state bank charter application based on confidential information. Miners & Merchants Bank v. Dowdall, 158 M 142, 489 P2d 1274 (1971). Decision prior to enactment of 32-1-204 (now repealed).

Creation of Bank: When the Superintendent of Banks (now Department of Administration) issued a certificate of authority for the establishment of a bank, the capital having been previously paid in, the organization became a state bank within the meaning of the Bank Holding Company Act of 1956 (U.S.C., Title 12, sec. 1841 through 1848), even though it did not actually commence business until some time later. First Nat'l Bank in Billings v. First Bank Stock Corp., 197 F. Supp. 417 (D.C. Mont. 1961), affirmed in 306 F2d 937 (9th Cir. 1962).

32-1-307. Amount of capital.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 17, Ch. 23, L. 2023. Amendment effective October 1, 2023.

1993 Amendment: Chapter 395 substituted language requiring Division in consultation with Board to determine appropriate level of capitalization of proposed corporation prior to issuance of certificate for former section that read: "(1) The amount of the common and preferred stock of a commercial bank shall not be less than $25,000, and in addition thereto there shall be created a surplus of not less than 10% of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the department for the certificate of authorization hereinabove mentioned.

(2) A commercial bank having its place of business in a city or town of more than 2,000 and less than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $30,000 and a surplus of 10% of the capital stock as hereinbefore provided. A commercial bank having its place of business in a city or town of more than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $50,000 and a surplus of 10% of the capital stock as hereinbefore provided.

(3) The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement and shall be not less than $100,000 or more than $10 million, of which amount at least $100,000 must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the department for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of $100 or such less amount as may be provided in the articles of incorporation, provided that this chapter shall not require any bank in existence and doing business to increase its capital stock."

Case Notes

Stock — Constitutes Property: Shares of stock of a state bank or trust company fall within the definition of the term "property" as given in Art. XII, sec. 17, 1889 Mont. Const. (Art. VIII, sec. 3, 1972 Mont. Const.), and must be assessed to their owners at their full cash value, except to the extent that that value is represented in property which is assessed to the bank or company. Mont. Nat'l Bank of Billings v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds in 276 US 499, 72 L Ed 673, 48 S Ct 331 (1929), conformed to 82 M 380, 267 P 304 (1928).

32-1-308. Bylaws.

Compiler's Comments

2019 Amendment: Chapter 75 in first sentence at end substituted "permanent records of the bank" for "book of bylaws"; inserted second sentence concerning public inspection of bylaws; and made minor changes in style. Amendment effective October 1, 2019.

1993 Amendment: Chapter 395 deleted (1) that read: "(1) The persons signing the articles of agreement shall at their first meeting adopt bylaws for the government of the corporation, which bylaws may provide for:

(a) the time, place, and manner of calling and conducting the meetings of the corporation;

(b) the number of stockholders constituting a quorum;

(c) the mode of voting by proxy;

(d) the time of the annual election of directors and the mode and manner of giving notice thereof;

(e) the duties of officers;

(f) the manner of election and the tenure of office of all officers other than the directors;

(g) suitable penalties for violation of bylaws, not exceeding in any case $100 for any one offense"; in first sentence, after "bylaws", deleted "adopted", in second sentence, after "hours", deleted "of each day except holidays", and deleted former last sentence that read: "The bylaws may be repealed or amended or new bylaws be adopted at the annual meetings or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or the power to repeal and amend the bylaws and adopt new bylaws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors"; and made minor changes in style.

32-1-321. Calling of first meeting — cancellation of certificate.

Case Notes

Commencement of Business: A corporation did not cease to be a bank because it did not commence business within 1 year from the date of its incorporation as required by section 15-808, R.C.M. 1947 (now repealed), when the Superintendent of Banks (now Department of Administration) did not cancel his certificate of authorization, as authorized by this section, but continued to recognize the corporation as a bank. First Nat'l Bank in Billings v. First Bank Stock Corp., 197 F. Supp. 417 (D.C. Mont. 1961), affirmed in 306 F2d 937 (9th Cir. 1962).

32-1-322. Board of directors — qualifications, tenure, and vacancies.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 415, L. 2023. Amendment effective May 3, 2023.

1993 Amendment: Chapter 395 in (2), in second sentence after "held", deleted "on any business day" and near end of third sentence, after "until", substituted "successors" for "the second Tuesday of the following January or until others"; deleted (3) that read: "(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board and the directors so appointed shall hold office until the next annual election"; and made minor changes in style.

1989 Amendment: In first sentence of (1), after "number", deleted "all of whom shall be stockholders as required by 32-1-324 and", at end of first sentence substituted "Montana" for "this state", and inserted second sentence providing shareholder requirements of corporation directors; in (2), at end of third sentence after "chapter", deleted "and that he is the owner in good faith of the required number of shares of stock as required by 32-1-324"; and made minor change in grammar. Amendment effective February 18, 1989.

1985 Amendment: In (1) after "not less than", substituted "three" for "3 or more than 11" and after "stockholders", substituted "as required by 32-1-324" for "of the bank"; and near end of (2) substituted "as required by 32-1-324" for "in the bank standing in his name on the books of the bank".

1983 Amendment: In (2), changed annual meeting date from "any Tuesday up to and including the second Tuesday in April" to "any business day before April 15".

1981 Amendment: Deleted "and citizens of the United States" after "stockholders of the bank" in (1).

Case Notes

Director as Surety: A bank director became surety on a bond given by the bank to secure deposits of public funds. His office did not disqualify him from accepting notes and mortgages from the bank to indemnify him for possible loss because of his suretyship. This was true when the bank was believed to be solvent at the time, and the transaction was in entire good faith. Ainsworth v. Kruger, 80 M 468, 260 P 1055 (1927).

32-1-325. Selection of officers and employees — minutes of meetings.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 18, Ch. 23, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 75 in (3) in end of first sentence deleted "in a book kept for that purpose", in third sentence substituted "signed, manually or electronically" for "subscribed to", in fifth sentence substituted "minutes must be available in the main office of the bank at all times and must be available" for "minute book must be kept in the main office of the bank at all times and must be presented", and substituted current last sentence for former text that read: "The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor"; and made minor changes in style. Amendment effective October 1, 2019.

1993 Amendment: Chapter 395 in (3), near beginning of first sentence after "directors", deleted "shall also elect a secretary" and in third sentence, at end, substituted "the person responsible for preparing the minutes" for "secretary"; and made minor changes in style.

1985 Amendment: In (1) changed "once a month" to "quarterly".

1983 Amendment: In last sentence of (2), deleted "and at least one vice-president" before "shall be chosen from the board of directors".

32-1-335. Purchase or loan of own capital stock prohibited — exception.

Compiler's Comments

2003 Amendment: Chapter 105 deleted former last sentence that read: "A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the capital stock." Amendment effective October 1, 2003.

2001 Amendment: Chapter 36 inserted second sentence allowing purchase or loan of own capital stock with department approval; and made minor changes in style. Amendment effective March 13, 2001.

Case Notes

Transfer of Assets Due to Impairment: A bank in need of funds to make good an impairment of its capital stock transferred certain questionable assets to its vice-president at their face value. He, in accordance with a resolution of the directors, secured a loan on his note, which was guaranteed by certain stockholders of the bank. The money was placed to the bank's credit. The transaction was not an absolute sale of the assets. The guaranteeing stockholder bringing this suit was entitled to reimbursement by the bank or, upon its suspension, to have his claim as one of its general creditors approved by the receiver (see 2001 amendment). Lyon v. Featherman, 80 M 504, 261 P 268 (1927).

32-1-339. Right of examination by stockholder.

Compiler's Comments

2019 Amendment: Chapter 271 at end substituted "Title 35, chapter 14, part 16" for "Title 35, chapter 1, part 11". Amendment effective June 1, 2020.

1993 Amendment: Chapter 395 in second sentence, after "inspect", substituted "the books and records" for "during business hours the general statement book showing the general assets and liabilities" and at end, after "bank", inserted "as provided in Title 35, chapter 1, part 11"; and made minor changes in style.

Case Notes

Constitutionality: This section is not a special law or one making an unreasonable classification in making the act applicable only to state banks. State ex rel. Powell v. St. Bank of Moore, 90 M 539, 4 P2d 717, 80 ALR 1494 (1931).

Effect of National Power: Since Congress alone has the power to regulate the internal affairs of national banks and, by its failure to declare upon the right of a stockholder in such a bank to inspect its books and records, left the common law on that subject in force, this section, limiting the right of inspection to stockholders in state banks, may not be held unconstitutional as discriminatory because it does not extend the same right to stockholders in all banks doing business in the state. State ex rel. Powell v. St. Bank of Moore, 90 M 539, 4 P2d 717, 80 ALR 1494 (1931).

Mandamus: If the rule declared by some courts that, since the granting of a Writ of Mandate is largely a matter of discretion, the remedy may be denied where it involves determination of the constitutionality of a statute is sound, it is inapplicable in a case where the Writ is sought to compel permission to inspect books and records of a state bank by a stockholder under this section. State ex rel. Powell v. St. Bank of Moore, 90 M 539, 4 P2d 717, 80 ALR 1494 (1931).

Petition by Stockholder: A stockholder in a state bank who seeks to compel officers of the bank to permit inspection of the bank's books and records, proceeding under this section, which grants such right as to the general statement book showing the bank's general assets and liabilities, excluding others (see 1993 amendment), must in his petition for a Writ of Mandate allege that the books and records enumerated in his demand do not contain information prescribed by the act. State ex rel. Powell v. St. Bank of Moore, 90 M 539, 4 P2d 717, 80 ALR 1494 (1931).

32-1-340. Conversion of surplus and undivided profits to capital stock.

Compiler's Comments

1993 Amendment: Chapter 395 in (2), after "vote", deleted "of two-thirds" and after "stock" deleted "in person or by proxy"; deleted former (4) that read: "New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash for it, but it shall be charged upon the books of the bank and in the statements of the bank against surplus and undivided profits so that the combined capital, surplus, and undivided profits are not reduced by the issuance of the new stock"; deleted (6) that read: "(6) If the department approves of the issuance of the new stock and so notifies the bank, the bank shall then file a certificate of issuance with the county clerk and recorder of the county in which the bank is located and with the secretary of state. Upon the filing with the secretary of state, the increase becomes effective"; and made minor changes in style.

32-1-361. Change from state to national bank.

Compiler's Comments

1993 Amendment: Chapter 395 in (2)(a), after "notice", substituted "of the change once a week for 4 consecutive weeks" for "thereof for 30 days"; and made minor changes in style.

Federal Statute: Act of Congress approved June 3, 1864, referred to in this section, is compiled in the United States Code as Title 12, sec. 21 through 24, 26 through 29, 35 through 37, 39, 51, 52, 53, 55, 57, 59 through 62, 66, 71, 72 through 76, 81 through 91, 93, 94, 101a, 102, 104, 107 through 110, 123, 124, 131 through 138, 141 through 144, 151, 152, 161, 164, 168 through 175, 181 through 186, 192 through 196, 481 through 485, 501, 541, 544 through 548, and 582.

32-1-362. National bank powers extended to state banks.

Compiler's Comments

2001 Amendment: Chapter 36 in (2) inserted last sentence allowing bank to act if department fails to act on application. Amendment effective March 13, 2001.

1999 Amendment: Chapter 100 in (1)(a) inserted "or interpretive ruling issued or"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 117 in (1), at beginning of first sentence, deleted "With the consent of the department" and after "national bank" inserted "if the power or activity is not expressly prohibited or limited by the laws of this state and"; substituted (1)(a) and (1)(b) concerning powers and activities authorized for national banks and application approved by Department for second sentence that read: "The department may prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by this section, provided that, subject to subsection (2), such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state"; substituted (2) concerning applications for former text that read: "If the United States congress allows national banks to establish branches without regard to state prohibitions, a bank organized under the laws of Montana may, with the consent of the department, establish a branch under the same conditions allowed national banks, despite the restrictions imposed by 32-1-372"; and made minor changes in style. Amendment effective March 20, 1997.

1981 Amendment: Inserted "subject to subsection (2)" before "such regulations and powers shall not apply" in (1); added (2) allowing state branch banking if federal government allows national branch banking without regard to state prohibitions.

Administrative Rules

ARM 2.59.102 Banks — direct leasing of personal property.

ARM 2.59.601 Conditions of investment in agricultural credit corporations.

Attorney General's Opinions

Direct Marketing of Fixed Annuities by State-Chartered Bank — When Allowed: Notwithstanding the list of permissible activities in 32-1-105, a state-chartered bank may, with consent of the Department of Commerce and pursuant to this section, directly market fixed annuities or engage in any other activity permitted national banks as long as no state statute expressly prohibits that activity. 43 A.G. Op. 76 (1990).

32-1-370. Interstate merger of banks — interstate agreements.

Compiler's Comments

2019 Amendment: Chapter 75 in (7) substituted "30%" for "22%". Amendment effective October 1, 2019.

2013 Amendment: Chapter 49 in (1) in second sentence after "if" substituted "any merger party" for "the resulting bank in a merger transaction authorized by this section"; inserted (2) establishing property rights, liabilities, and duties of resulting bank with respect to merging parties; inserted (3) pertaining to a resulting bank maintaining main banking houses and branch banks and acquiring other branch banks; inserted (4) requiring department approval for a resulting bank to establish a branch bank; inserted (5) requiring resulting banks to provide information to department prior to acquiring or establishing branch banks in this state; inserted (7) limiting a resulting bank's control of total amount of deposits in depository institutions and credit unions; and made minor changes in style. Amendment effective October 1, 2013.

2003 Amendment: Chapter 105 deleted former (1)(a) that read: "(a) A bank located in this state may not enter into a merger transaction with a bank not located in this state if the merger transaction would be effective on or before September 30, 2001"; at beginning of (1) deleted "After September 30, 2001"; substituted (2) concerning agreements with respect to interstate banking for former language that read: "This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate merger transactions involving banks located in this state"; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: Section 19(1), Ch. 117, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved March 20, 1997.

Administrative Rules

ARM 2.59.1002 Merger application procedures.

32-1-371. Merger of banks.

Compiler's Comments

2019 Amendment: Chapter 75 in (5) substituted "30%" for "22%". Amendment effective October 1, 2019.

2013 Amendment: Chapter 49 throughout section substituted references to merge for references to consolidate or merge; in (1)(a) in first sentence after "department" substituted "if any merger party is a bank organized under the laws of this state" for "in the case of a resulting state bank" and in second sentence after "merger" substituted "under this subsection (1)" for "of a state bank" and at end inserted "if the resulting bank is organized under the laws of this state"; in (2) inserted current language pertaining to rights, duties, and obligations of resulting bank with respect to merging parties for former language that read: "Upon consolidation or merger, the corporate franchise, the corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, and guardian and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed, of the consolidating or merging banks, are, without the necessity of any instrument of transfer, consolidated or merged and continued in and held, enjoyed, and assumed by the resulting bank. The resulting bank has the right equal with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office"; in (4)(b) and (4)(c) substituted "(4)(a)(ii)" for "(4)(a)"; in (4)(c) in first sentence after "shall" inserted "simultaneously" and deleted second sentence that read: "The copies must be filed with the department within 5 days of their filing with the federal or other state agency"; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendment: Chapter 15 deleted former (1)(b) that read: "(b) This section does not permit a bank or bank holding company located in another state to acquire by consolidation or merger any bank or branch bank in this state"; in (2) at end of first sentence and beginning of second sentence and in (3) near beginning substituted "resulting bank" for "consolidated or merged bank"; inserted (4) providing permitted actions, approval requirements, and filing requirements for resulting banks; and made minor changes in style. Amendment effective October 1, 2005.

1997 Amendment: Chapter 117 substituted (1) concerning consolidation or merger of banks doing business in this state for former (1) and (2) that read: "The words "bank" or "banks" as used in 32-1-372 and this section include commercial banks, savings banks, trust companies, investment companies, and other corporations carrying on the business of banking, of a trust company, or of an investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

(2) (a) Any two or more banks doing business in this state and under common ownership may, with the approval of the state banking board in the case of state banks, consolidate or merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Before a consolidation or merger becomes effective, it must be approved by the shareholders of each merging bank by a vote of not less than two-thirds of the outstanding shares of each class of voting stock entitled to vote on the merger proposal at a meeting called to consider the merger. The approval by the shareholders must be provided in writing or reflected in the minutes of the shareholders' meeting. The capital stock of the consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the consolidating banks. If upon the completion of the merger the resulting bank has a main banking house and a branch bank or branch banks as defined in 32-1-109, then all banks involved must have conducted business in this state for a continuous period of at least 5 years prior to the effective date of the merger.

(b) This section does not permit a bank or bank holding company located in another state to acquire by consolidation, merger, or otherwise any bank doing business in this state in contravention of 12 U.S.C. 1842.

(c) Two or more banks under common ownership may not consolidate or merge unless all banks under the common ownership are parties to the consolidation or merger. Subject to approval of the state banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed to prohibit consolidation or merger of banks that come under common ownership with banks that have been previously merged or consolidated"; deleted (5) that read: "(5) A branch bank shall offer all services offered at a main banking house"; in (4), after "merger", substituted "the resulting bank, including all depository institutions that are affiliates of the resulting bank" for "and subject to the provisions of subsection (6)(b), the banks involved" and after "more than" substituted "22% of the total amount of deposits of insured depository institutions" for "19% of all deposits in federally insured banks, savings associations"; deleted (6)(b) that read: "(b) On October 1, 1995, and on October 1 of each succeeding year, the percentage limitation contained in subsection (6)(a) must be increased by 1% until the limit reaches 22%"; deleted (7) that read: "(7) A branch bank may be relocated with the approval of the state banking board in the city or within 3,000 feet of the city limits in which it is located. Upon relocation, the branch may not be closer than 200 feet to a branch or detached facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurements to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection in relation to a branch or detached facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a branch or detached facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurements to be made in a straight line from the closest points of the closest structures involved"; and made minor changes in style. Amendment effective March 20, 1997.

1995 Amendment: Chapter 265 in (2)(a), at end of second sentence, substituted requirement for approval by shareholders of merging bank by two-thirds vote at meeting called to consider merger for "ratified by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding", inserted third sentence requiring approval in writing or in minutes, and inserted last sentence requiring, under stated circumstances, all banks to have conducted business in the state for 5 years before effective date of merger; in (2)(c) inserted second sentence regarding construction of section applicable to mergers or consolidations of certain banks; inserted (6) providing limitation on control of deposits; inserted (7) concerning relocation of branch banks; and made minor changes in style. Amendment effective March 27, 1995.

1989 Amendment: In (1) inserted "32-1-372 and"; in (2)(a) inserted "and under common ownership"; inserted (2)(b) requiring consolidation, merger, or banking in compliance with federal law; inserted (2)(c) prohibiting consolidation of two or more banks under common ownership unless all commonly owned banks are parties to consolidation or merger; inserted (4) requiring consolidated or merged bank to operate one prior banking house as main bank; inserted (5) requiring branch bank to provide services offered at main banking house; and made minor changes in grammar and style. Amendment effective January 1, 1990.

Administrative Rules

ARM 2.59.1001 Merger application.

ARM 2.59.1002 Merger application procedures.

Attorney General's Opinions

Service and Geographical Limitations Applicable to Remote Service Offices: A trust company may not establish remote service offices that would offer less than all services offered at the principal office or that would not comply with statutory geographical limitations. (See 1997 amendment to this section and 1995 amendment to 32-1-372.) 45 A.G. Op. 19 (1993).

32-1-372. Branch bank.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 19, Ch. 23, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 75 in (4) substituted "branch banks and other banking offices in existence" for "branch banks and other banking offices, including detached facilities, that are in existence"; inserted (8) requiring a bank to notify the department and customers of branch bank closure or relocation; in (9) substituted "may" for "is authorized to"; and made minor changes in style. Amendment effective October 1, 2019.

2011 Amendment: Chapter 49 in (1) in second sentence substituted "in this state" for "wherever located"; in (6) substituted current language regarding establishment and operation of de novo branch bank for "A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. However, this section may not be interpreted to authorize de novo interstate bank branching and may not be interpreted to authorize a bank not located in this state to establish, acquire, or operate a branch bank in this state"; inserted (7) requiring copy of bank application to be filed with department; and inserted (8) authorizing department to adopt rules. Amendment effective October 1, 2011.

2005 Amendment: Chapter 15 in (1) at end of first sentence deleted "at any place within the state", in second sentence after "branch bank" inserted "wherever located", and inserted third sentence pertaining to a bank organized in this state acquiring a branch bank or other office outside this state; in (3) near middle after "defined in" substituted "32-6-103" for "the Montana Electronic Funds Transfer Act"; in (6) inserted first sentence concerning establishing and maintaining branch banks and near middle of second sentence inserted "de novo interstate bank branching and may not be interpreted to authorize", after "establish" inserted "acquire, or", and after "operate" deleted "or maintain"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 36 deleted former (2) that read: "(2) A branch bank formed under this section may not be closer than 200 feet to a branch bank operated by any other commercial bank or closer than 300 feet to the main banking house of any other commercial bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection may be decreased by written agreement of the banks involved"; and made minor changes in style. Amendment effective March 13, 2001.

1997 Amendment: Chapter 117 substituted (1) concerning establishment of branch banks for former text that read: "A bank may establish and maintain a branch bank only as provided in 32-1-371 and this section and, in the case of a bank organized under the laws of this state, with the prior approval of the state banking board, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks"; substituted (2) concerning location of branch bank for former text that read: "(a) With the prior approval of the department, a bank or branch bank, but not a detached facility, doing business in this state may establish and maintain:

(i) one detached drive-in and walk-up facility consisting of one or more teller windows; or

(ii) if the bank or branch bank is doing business in a city or consolidated government with a population of more than 20,000 as indicated in the most recent United States census, two drive-in or walk-up facilities consisting of one or more teller windows.

(b) A detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located. A facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved"; in (3), at beginning, substituted "branch bank may but is not required to" for "detached facility may"; deleted (2)(d) that read: "(d) A detached facility authorized under this subsection (2) may not be considered a branch bank"; in (4) deleted second sentence that read: "The use of satellite terminals is not subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities"; substituted (5) concerning facilities in existence on July 1, 1997, for former text that read: "A bank, other than a bank owned by a holding company not located in Montana, may establish, maintain, and operate a branch bank in a city in which no bank or branch bank is located at the time the branch bank is to be established if that city is in the county or a county adjoining the county in in which the main banking house of the branch bank is located"; substituted (6) concerning services for other banks for former text that read: "Common ownership notwithstanding, a bank located in this state may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority"; substituted (7) concerning interpretation of section for former text that read: "A branch bank must have a community advisory board"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 307 in (2)(a), after "branch bank", inserted "but not a detached facility"; in (2)(b) deleted last sentence that read: "The service of a facility must be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and other transactions that are normally and usually conducted or handled at teller windows in the main banking house or branch bank"; inserted (2)(c) authorizing detached facility to offer all services and all business that bank is authorized to offer or conduct; inserted (2)(d) prohibiting detached facility from being considered branch bank; and made minor changes in style. Amendment effective March 31, 1995.

1993 Amendment: Chapter 401 inserted (2)(a)(ii) allowing two drive-in or walk-up facilities in a city or consolidated government political unit with a population of more than 20,000 in which the bank or branch bank is doing business; in (5), near beginning after "bank", inserted "located in this state" and at end deleted last sentence that read: "Nothing in this subsection allows a bank owned by a holding company not located in this state to acquire an interest in a bank in contravention of 12 U.S.C. 1842"; and made minor changes in style.

Severability Clause — Contingent Voidness — Saving Clause: Chapter 401, L. 1993, which enacted 32-1-381 through 32-1-384 and amended 32-1-372, contained a severability clause in sec. 6. The clause did not cover subsections (3) and (4) of 32-1-383. Subsection (2) of sec. 6 provided that if subsection (3) or (4) of 32-1-383 is invalid or if the application of subsection (1) of 32-1-383 must be extended to bank holding companies, then Ch. 401 is void.

Chapter 401 also contained a saving clause in sec. 7 providing that if the chapter is voided, the voiding does not affect an acquisition or rights and duties that matured, penalties that were incurred, or proceedings that were begun before the date the chapter is void.

1991 Amendment: Near beginning of (4), after "branch bank", deleted former (4)(a) that read: "(a) in the county or a county adjoining the county in which the main banking house of the branch bank is located" and near end, after "established", inserted "if that city is in the county or a county adjoining the county in which the main banking house of the branch bank is located"; and made minor changes in style. Amendment effective February 7, 1991.

1989 Amendment: Near beginning of (1) inserted "establish and" and substituted language allowing bank to establish branch bank pursuant to 32-1-371 and with prior approval of Board for "receive deposits, or pay checks except over the counter of and in its own banking house"; in (2), in three places, inserted references to branch bank and substituted second sentence requiring placement of detached facility within city or 3,000 feet of city limits of main or branch bank for former second sentence prohibiting placement of detached facility more than 1,000 feet from main bank; deleted (3)(b) describing allowable distances of satellite terminals from main banking house; inserted (4) describing where bank owned by in-state company may establish branch bank; inserted (5) authorizing operation as branch bank and acquisition by consolidation or merger made pursuant to state law if receiver appointed and requiring acquisition in compliance with federal law; inserted (6) requiring advisory board for branch bank; and made minor changes in style and grammar. Amendment effective January 1, 1990.

Administrative Rules

ARM 2.59.1101 Application procedure for approval to establish new branch.
ARM 2.59.1102 Review procedure for applications for approval to establish new branch bank.
ARM 2.59.1103 Procedure following approval of application to establish new branch bank.

Case Notes

Consolidation of Banks: Section 5-1124, R.C.M. 1947 (repealed in 1969), provided that when two or more banks in the same county or in adjoining counties consolidate, the consolidated bank may, on the written consent of the Superintendent of Banks (now Department of Administration), maintain and operate offices in the locations of the consolidating banks. This created an exception to this section, which prior to the 1989 amendment prohibited branch banking, and permitted branch banking in limited cases. Here, one federal bank, which was a subsidiary of a bank holding company, acquired the assets of another federal bank in exchange for holding company stock. The bank then consolidated with the other bank and maintained banking facilities at the locations of both consolidated banks. Leuthold v. Camp, 273 F. Supp. 695 (D.C. Mont. 1967), affirmed in 405 F2d 499 (9th Cir. 1969).

Holding Company Banking: This section does not prohibit holding company banking. First Nat'l Bank in Billings v. First Bank Stock Corp., 197 F. Supp. 417 (D.C. Mont. 1961), affirmed in 306 F2d 937 (9th Cir. 1962).

Intention to Operate as Branch: A state bank whose stock was substantially all owned by a national bank did not violate this section prior to the 1989 amendment, although the interlocking directorates of the national bank and the state bank at one time intended that the state bank should operate as a branch of the national bank, when steps were taken to eliminate any such intention. First Nat'l Bank in Billings v. First Bank Stock Corp., 197 F. Supp. 417 (D.C. Mont. 1961), affirmed in 306 F2d 937 (9th Cir. 1962).

Attorney General's Opinions

Service and Geographical Limitations Applicable to Remote Service Offices: A trust company may not establish remote service offices that would offer less than all services offered at the principal office or that would not comply with statutory geographical limitations. (See 1995, 1997, and 2001 amendments.) 45 A.G. Op. 19 (1993).

Sale of Money Orders — Branch Banking: A bank violated the branch banking prohibition prior to the 1989 amendment by selling money orders through business firms located away from the bank building as the activity constitutes branch banking. 26 A.G. Op. 170 (1957).

Law Review Articles

Branch Banking in Montana, Frantz, 44 Mont. L. Rev. 263 (1983).

32-1-374. Conversion of national bank to state bank.

Compiler's Comments

2019 Amendment: Chapter 75 in (1) at beginning of first sentence substituted "A national bank may convert to a state bank" for "A national bank that is authorized to dissolve and that has taken the necessary steps to effect dissolution may reorganize as a state bank" and substituted current last sentence for former text that read: "Upon the filing of the articles as provided by law and upon the approval of the department, the bank is reorganized under this chapter, and all assets, real and personal, of the dissolved national bank are vested in and become the property of the reorganized state bank, subject to all liabilities of the national bank not liquidated before the reorganization"; and made minor changes in style. Amendment effective October 1, 2019.

1993 Amendment: Chapter 395 inserted (2) requiring bank cashier to publish notice of change once a week for 4 consecutive weeks in newspaper, to send printed notice by mail to nonvoting or dissenting stockholder, and to notify Department of decision to incorporate; and made minor changes in style.

32-1-376. Sale of branch bank.

Compiler's Comments

2013 Amendment: Chapter 49 substituted current language regarding sale of branch bank for former language that read: "A bank located and doing business in this state may, with the approval of the department in the case of a state bank, buy from any other bank also located and doing business in this state all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks. Upon completion of the sale, the purchasing bank may operate a branch bank at the selling bank's former branch bank location." Amendment effective October 1, 2013.

1997 Amendment: Chapter 117 in first sentence, at beginning, deleted "Notwithstanding the provisions of 32-1-371 and 32-1-372", after "approval of the" substituted "department" for "state banking board", and at end deleted "including the right to own and operate any detached facilities or satellite terminals, upon compliance with the provisions of this part". Amendment effective March 20, 1997.

Effective Date: Section 18, Ch. 265, L. 1995, provided that this section is effective on passage and approval. Approved March 27, 1995.

32-1-377. Agreement of purchase and sale.

Compiler's Comments

1997 Amendment: Chapter 117 in (2), at end of first sentence, substituted "department" for "state banking board" and deleted third and fourth sentences that read: "After approval, a notice of the sale must be published once a week for 3 consecutive weeks in a newspaper of general circulation in the county where the branch is located. The purchasing bank shall provide proof to the department that the notice has been published in accordance with this section." Amendment effective March 20, 1997.

Effective Date: Section 18, Ch. 265, L. 1995, provided that this section is effective on passage and approval. Approved March 27, 1995.

32-1-378. Bank acquisition or control — notice or application — registration statement — violations — penalties.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

32-1-379. Bank acquisition or control — disapproval by department — change of officers.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

32-1-380. Rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

32-1-384. Federal applications — comments.

Compiler's Comments

2019 Amendment: Chapter 75 in (1) in first sentence before "bank holding company" deleted "bank or" and at end of second sentence substituted "32-1-378(7)" for "32-1-383(3)"; in (2) in second sentence before "bank holding company" deleted "bank or"; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 49 in (1) and (2) substituted "bank or bank holding company" for "financial institution"; and in (1) in second sentence inserted "acquiring". Amendment effective October 1, 2013.

1997 Amendment: Chapter 117 in (1), at end of second sentence, deleted reference to 32-1-383(4); and made minor changes in style. Amendment effective March 20, 1997.

Severability Clause — Contingent Voidness — Saving Clause: Chapter 401, L. 1993, which enacted 32-1-381 through 32-1-384 and amended 32-1-372, contained a severability clause in sec. 6. The clause did not cover subsections (3) and (4) of 32-1-383. Subsection (2) of sec. 6 provided that if subsection (3) or (4) of 32-1-383 is invalid or if the application of subsection (1) of 32-1-383 must be extended to bank holding companies, then Ch. 401 is void.

Chapter 401 also contained a saving clause in sec. 7 providing that if the chapter is voided, the voiding does not affect an acquisition or rights and duties that matured, penalties that were incurred, or proceedings that were begun before the date the chapter is void.

Part 4

Operation and Regulation

Part Administrative Rules

Title 2, chapter 59, ARM Banking and financial institutions.

Part Case Notes

DECISIONS UNDER CURRENT LAW

Existence of Fiduciary Duty Considered Question of Law, Not Fact — Summary Judgment on Question Proper if No Genuine Issue of Material Fact Exists: To resolve several inconsistent prior opinions, the Supreme Court held that the issue of whether a fiduciary duty exists between two parties is a question of law, not fact, and thus may be resolved on summary judgment if no genuine issues of material fact exist. Similarly, the issue of whether a special relationship exists between two parties that would give rise to a fiduciary relationship is also a question of law, not fact. In order to determine whether a special relationship exists in cases in which it does not normally exist, such as between a bank and a customer, a court may be required to make a fact-intensive inquiry. The circumstances of a particular relationship are factual, so disputes over material facts will preclude summary judgment, but the conclusion drawn by a court from undisputed facts is one of law, not of fact. Gliko v. Permann, 2006 MT 30, 331 M 112, 130 P3d 155 (2006), overruling Davis v. Church of Jesus Christ of Latter Day Saints, 258 M 286, 852 P2d 640 (1993), and Kondelik v. First Fidelity Bank of Glendive, 259 M 446, 857 P2d 687 (1993).

No Theft Prosecution for Removal of Funds From Joint Account: Kane was charged with theft for purposely or knowingly obtaining or exerting unauthorized control over funds and other items belonging to Hilger. Kane filed a motion to dismiss, which the District Court granted on grounds that as a joint tenant on a checking account with Hilger, Kane could not, as a matter of law, be prosecuted for theft of funds taken from the joint account. The state contended that 72-6-211 governed the joint account and permitted prosecution for theft in such cases. The Supreme Court affirmed, holding that the statute did not apply to controversies between cotenants. Absent evidence that Kane had threatened or deceived Hilger into establishing the joint tenant arrangement, Kane's actions did not make out the elements of criminal theft. St. v. Kane, 1999 MT 337, 297 M 421, 992 P2d 1283, 56 St. Rep. 1343 (1999), following St. v. Haack, 220 M 141, 713 P2d 1001 (1986), and distinguishing St. v. Curtis, 241 M 288, 787 P2d 306, 47 St. Rep. 277 (1990).

Bank's Fiduciary Duty to Borrower: The relationship between a bank and a person to whom it lends money is generally that of creditor and debtor and, as such, does not impose fiduciary duties on the bank except on proof of special circumstances, such as a situation in which the bank acts as an adviser. Security agreements between the bank and the company and its owners were part of the creditor/debtor relationship. The bank merely exercised its rights under the security agreements and the law when it foreclosed on the collateral. Even assuming that the bank owed a fiduciary duty to the company and its owners, there could be no breach of such duty when the bank acted for legitimate business reasons in accordance with the security agreements. Richland Nat'l Bank & Trust v. Swenson, 249 M 410, 816 P2d 1045, 48 St. Rep. 730 (1991). See also Kondelik v. First Fidelity Bank of Glendive, 259 M 446, 857 P2d 687, 50 St. Rep. 874 (1993). Kondelik was overruled, to the extent that the issue of whether a fiduciary duty or a special relationship exists between two parties is a question of law, not fact, in Gliko v. Permann, 2006 MT 30, 331 M 112, 130 P3d 155 (2006).

No Negligence Regarding Repayment Term of Loan: Borrowers argued that bank was negligent in structuring a loan, but they cited no authority to support the proposition that a negligence action may be based on a repayment term of a lawful contract bargained between two parties. Absent the existence of a fiduciary duty, which bank did not have with respect to the loan, the law does not support such a claim. Richland Nat'l Bank & Trust v. Swenson, 249 M 410, 816 P2d 1045, 48 St. Rep. 730 (1991).

No Tortious Interference With Borrower's Business Relationships: To establish a prima facie case of tortious interference with business relations, a person must show intentional and willful acts that are calculated to damage the person's business without right or justifiable cause and that are done with the unlawful purpose of causing damage or loss. Lender bank was merely exercising its right granted by a security agreement when, prior to notifying borrower, bank notified a business with which borrower had an account receivable that bank had a specific assignment from borrower of accounts receivable and requested the business to issue future payments with both bank and borrower as payees. Bank did not commit tortious interference with borrower's business relationships. Richland Nat'l Bank & Trust v. Swenson, 249 M 410, 816 P2d 1045, 48 St. Rep. 730 (1991), followed in St. v. Kandarian, 268 M 408, 886 P2d 954, 51 St. Rep. 1381 (1994).

Forged Check — Plaintiffs' Contribution to Damages — Bank Not Liable: When there was substantial credible evidence that plaintiffs' actions contributed to their damages, the jury verdict in favor of defendant bank would not be overturned. When the complaint alleged negligence and bad faith on the part of the bank but not breach of a fiduciary duty, the Supreme Court refused to consider whether it was error to submit the issue of comparative negligence to the jury. Ahmann v. Am. Fed. S&L Ass'n, 235 M 184, 766 P2d 853, 45 St. Rep. 2305 (1988).

Banks — Real Estate Sale — No Fiduciary Relationship: The bank prepared a mortgage and deed of trust as a service to and at request of the buyer and the sellers. Upon default of the buyer, the sellers filed an action for declaratory ruling as to rights between the bank and the sellers. The sellers argued there was a fiduciary relationship between themselves and the bank. The court found there were no special circumstances present that would create a fiduciary relationship when the bank did not find the buyer or advise on the terms of the sale, the sellers maintained accounts in other banks, and the sellers had dealt with the loan department on only a few occasions prior to the transaction in question. The sellers' dealings with the bank were not of the exclusive repeated nature necessary to justify finding a fiduciary relationship. Pulse v. N. Am. Land Title Co. of Mont., 218 M 275, 707 P2d 1105, 42 St. Rep. 1578 (1985), followed in Simmons v. Jenkins, 230 M 429, 750 P2d 1067, 45 St. Rep. 328 (1988). See also Mann Farms, Inc. v. Traders St. Bank of Poplar, 245 M 234, 801 P2d 73, 47 St. Rep. 2094 (1990) (replacing previous opinion, subsequently withdrawn, at 47 St. Rep. 1557 (1990)), Lachenmaier v. First Bank Sys., Inc., 246 M 26, 803 P2d 614, 47 St. Rep. 2244 (1990), Simmons Oil Corp. v. Holly Corp., 258 M 79, 852 P2d 523, 50 St. Rep. 433 (1993), Kondelik v. First Fidelity Bank of Glendive, 259 M 446, 857 P2d 687, 50 St. Rep. 874 (1993), and Gliko v. Permann, 2006 MT 30, 331 M 112, 130 P3d 155 (2006).

Bank's Fiduciary Duty to Customers It Gives Financial Advice — Real Estate Sales: Wife, whose husband had recently died, signed a contract for a deed to her ranch with Dittman, who signed as "trustee". There were two other purchasers, who did not sign: a person to whom, according to the evidence, wife would not have knowingly sold and the marketing officer of the bank used by the wife and husband for some 24 years. Wife was unfamiliar with real estate and financial affairs and relied upon the advice of various bank officers with regard to the sale of the ranch. This put the bank in a prima facie fiduciary relationship as to the wife. The relationship and its attendant duties extended to the advising officers in their dealings with the wife in regard to sale of the ranch. The marketing officer thus had a duty to fully inform the wife and protect her interests. This duty he breached, and the breach amounted to constructive fraud, where evidence showed that: (1) the contract price and terms were disadvantageous to the wife; (2) the true purchasers were not disclosed to her either by the contract or the marketing officer; (3) the purchasers intended to and began to subdivide and sell the ranch, though the marketing officer knew wife apparently did not wish this, having refused an earlier offer to purchase with right to subdivide; (4) the marketing officer had extensive financial interests involving loans to him from his bank, and an audit of the bank recommended that in view of this his lending authority should be eliminated or curtailed; and (5) the lower court was unimpressed with the way in which wife's attorney in the negotiations represented her interests. The lower court properly ordered the contract for deed rescinded. Deist v. Wachholz, 208 M 207, 678 P2d 188, 41 St. Rep. 286 (1984).

DECISIONS UNDER FORMER LAW

Deception in Creation of Joint Account: The defendant, relying on St. v. Haack, 220 M 141, 713 P2d 1001 (1986), argued that her conviction for theft should be overturned because the victim had agreed to set up the joint account and had approved her actions. The Supreme Court held that the defendant's case was distinguishable from Haack because the issue in the defendant's case was whether she had used deception in getting the victim to open the account. The court held that there was sufficient evidence to support the jury's guilty verdict. St. v. Curtis, 241 M 288, 787 P2d 306, 47 St. Rep. 277 (1990), distinguished in St. v. Kane, 1999 MT 337, 297 M 421, 992 P2d 1283, 56 St. Rep. 1343 (1999).

Withdrawal of Funds by Co-Owner From Joint Tenancy Bank Account: As a matter of law, a co-owner of a joint tenancy bank account cannot be convicted of the crime of theft for withdrawing funds from the joint tenancy account. A joint tenancy bank account is a special relationship between co-owners; this special relationship precludes application of the theft laws. Section 45-6-303, relating to the offender's interest in property, requires the owner to have "an interest to which the offender is not entitled". The special relationship between co-owners in a joint tenancy bank account ensures that there is no "interest to which the offender is not entitled" by a joint tenant. St. v. Haack, 220 M 141, 713 P2d 1001, 43 St. Rep. 242 (1986), followed in St. v. Kane, 1999 MT 337, 297 M 421, 992 P2d 1283, 56 St. Rep. 1343 (1999).

Death of Partner — Disposition of Property Held Jointly by Partners: Robert and William, brothers, opened a joint checking account in 1947, paid all ranch expenses through the account, put all ranch income in the account, and equally split net profits. All cattle were branded with either of two brands, each of which was registered in the name of "William Palmer or Robert Palmer". The brothers were also joint tenants in a commodity brokerage account. The Supreme Court held that the cattle and both accounts were partnership property not held in joint tenancy and remained so upon Robert's death. Thus, they did not pass to William as the surviving joint tenant; rather, they remained in the partnership for the purpose of winding up the partnership and paying its liabilities, after which William must account to Robert's survivor, his widow, for Robert's share of the partnership. By its very nature, partnership property must be treated differently than property of individuals, including property held by individuals as joint tenants but who are not in partnership. This rule applies regardless of the formal legal manner in which the property is held. This is a rule of equity developed over hundreds of years and codified in the Uniform Partnership Act. In re Estate of Palmer, 218 M 285, 708 P2d 242, 42 St. Rep. 1585 (1985), followed in Fiedler v. Fiedler, 266 M 133, 879 P2d 675, 51 St. Rep. 691 (1994).

Creation of Tenancy in Common in Bank Account — Rights of Creditor: When the signature card for a bank account did not specify that the two account holders had rights of survivorship, the estate created was that of a tenancy in common rather than a joint tenancy. Therefore, the creditor of one account holder was entitled to only one-half of the total amount of funds in the account. Univ. of Mont. v. Coe, 217 M 234, 704 P2d 1029, 42 St. Rep. 1160 (1985), distinguished in Seman v. Lewis, 252 M 508, 830 P2d 1294, 49 St. Rep. 206 (1992).

Extrinsic Evidence of Ownership of Joint Bank Account Inadmissible When Third-Party Rights Involved: Evidence of the intent of the parties with respect to ownership of funds in a joint bank account is admissible only in a dispute between those parties and not when the dispute involves the rights of a third party. Univ. of Mont. v. Coe, 217 M 234, 704 P2d 1029, 42 St. Rep. 1160 (1985), distinguished in Seman v. Lewis, 252 M 508, 830 P2d 1294, 49 St. Rep. 206 (1992), in which extrinsic evidence regarding intent was held admissible because it was submitted to supplement rather than contradict the uncertain terms of the signature card.

Addition of Name to Signature Card Not Proof of Intent to Make Gift: The plaintiff added her nephew's name to a joint tenancy signature card for her bank checking account to facilitate the administration of her estate upon her death. All money in the account was deposited by the plaintiff, who exercised exclusive control over the account. The plaintiff transferred money from the account to her nephew and his wife, who used the sums to purchase real estate. After her nephew died, the plaintiff sought to secure title to the real property when her nephew's wife refused to repay the money the plaintiff had given the couple and which she considered a loan to them. The defendant, who is plaintiff's nephew's widow, contended the money was a gift to the couple. However, the plaintiff testified at length that the money was intended as a loan to her nephew. The addition of her nephew's name to the signature card of her checking account was not sufficient evidence to overcome the plaintiff's testimony that there was no donative intent. When a depositor during her lifetime raises the issue of ownership of funds in a joint tenancy account, the statements on the signature card are not conclusive and additional evidence may be examined to ascertain the true intent of the parties. To constitute a gift, the addition of a party's signature to a bank account signature card must satisfy all the requirements of a gift inter vivos: delivery, donative intent, and acceptance by the donee. The signature cards of joint tenancy accounts are forms containing language drafted by the depository institution and may not accurately express the intentions and relationships between the joint tenants. Peterson v. Kabrich, 213 M 401, 691 P2d 1360, 41 St. Rep. 2196 (1984).

Joint Tenancy in Certificate and Account Upheld by Contract and Gift Theories — Single Signature on Bank Card Sufficient: The deceased sister of the plaintiff purchased certificates of deposit and opened a checking account, all made payable to the decedent or the defendant husband, but only the decedent signed the bank's signature cards and the defendant was never told of the certificates and the account. After the decedent was declared to have died intestate, the plaintiff brought an action to recover the amount of the account and certificates. The Supreme Court affirmed the judgment of the District Court, holding that the decedent had established a valid joint tenancy, under either a gift or contract legal theory, in both the account and certificates. The decedent's signature alone on the bank card is sufficient donative intent to constitute a gift under the rationale of St. Bd. of Equalization v. Cole, 122 M 9, 195 P2d 989 (1943), and there was sufficient evidence to hold that a contract existed to make a gift to the defendant. Malek v. Patten, 208 M 237, 678 P2d 201, 41 St. Rep. 305 (1984).

Joint Tenancy Distinguished: A joint bank account differs from other types of joint tenancies in that in the latter case a transfer by one cotenant of his interest to a third party creates a tenancy in common as between the remaining cotenant and transferee. One cotenant can only transfer the amount of his interest. On the other hand, either joint owner of a joint bank account, by virtue of the special contract with the bank, can acquire dominion over the entire account by drawing a proper order on the bank. A joint bank account is otherwise subject to the same rules as other joint tenancies. St. Bd. of Equalization v. Cole, 122 M 9, 195 P2d 989 (1948).

Husband and Wife Joint Bank Account — Withdrawals: When husband and wife have a joint bank account to which the former has contributed, the latter may withdraw it and use it as she may choose. Kranjcec v. Belinak, 114 M 26, 132 P2d 150 (1942).

Signature Card as Contract: When a mother and daughter signed a signature card containing a provision that the entire account or any part could be withdrawn by or upon the order of either of them, in opening a joint account at the bank, the card amounted to a contract between the parties, and when the daughter drew a check covering practically the entire account, the bank was legally bound to pay it although made without the mother's consent, and the court was bound by the contract. The bank was not liable in an action for conversion. Ludwig v. Mont. Bank & Trust Co., 109 M 477, 98 P2d 377 (1939).

Guardian as Trustee: The position of guardian is one of trust and not of agency. The funds coming into the hands of the guardian are trust funds which he must keep safely. Such funds as are necessary to be kept on hand for the care of his ward, he may deposit in a reliable bank. If due care is exercised in selecting the bank, he is not open to the charge of violating his trust and is not personally liable for the deposit in case of the failure of the bank. Pethybridge v. First St. Bank of Livingston, 75 M 173, 243 P 569 (1926).

Part Law Review Articles

A Primer on the Developing Doctrine of Constructive Fraud in Montana, Monhart, 52 Mont. L. Rev. 153 (1991).

Termination of Credit for the Farm or Ranch: Theories of Lender Liability, Bahls, 48 Mont. L. Rev. 213 (1987).

Survey: Good Faith and Fair Dealing; An Analysis of Recent Cases, Hubble, 48 Mont. L. Rev. 193 (1987).

32-1-402. When advertising as bank prohibited — trade names restricted.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 20, Ch. 23, L. 2023. Amendment effective February 28, 2023.

2013 Amendment: Chapter 123 in (1)(a) substituted "issuing notes" for "issuing notices"; and in two places in (3) and in (6) substituted "bank, savings bank, or trust or investment company" for "bank, savings bank, trust, or investment company". Amendment effective October 1, 2013.

2003 Amendments — Composite Section: Chapter 105 in (4)(a) near end of first sentence after ""saving"" deleted ""trust", "trustee""; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 340 at beginning of (1)(a) inserted exception clause; and near beginning of (4)(a) after "domestic or foreign" inserted exception clause. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 7, Ch. 340, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to a school financial institution opened on or after July 1, 2003."

1993 Amendment: Chapter 395 at beginning of (1) inserted exception clause; in (4)(a), at end of first sentence, inserted "unless the department has granted a waiver"; inserted (4)(b) authorizing Department to grant waiver for use of restricted word to nonprofit organization if organization is not acting as financial institution and name used will not mislead an individual into thinking that organization is acting as financial institution; and made minor changes in style.

32-1-403. Penalty for transacting business without certificate.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 21, Ch. 23, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-412. Limits on excessive borrowing.

Compiler's Comments

2003 Amendment: Chapter 105 substituted current text concerning prevention of excessive borrowing for former text that read: "(1) Except as provided in subsection (3), a bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. The bills payable and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) Subject to subsections (1) and (3), a bank may not at any time become indebted, either directly or indirectly, for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

(3) A bank may borrow funds from a federal home loan bank for use:

(a) in financing home ownership;

(b) in financing affordable housing programs;

(c) in financing small business, small farm, and agribusiness loans; or

(d) in interest rate risk management, liquidity management, or other banking activities undertaken pursuant to federal home loan bank advance programs authorized under the Federal Home Loan Bank Act or undertaken pursuant to rules or regulations of the federal housing finance board.

(4) Loans or extensions of credit from a federal home loan bank are not subject to any limitations based on capital or surplus. The division may prevent excessive borrowing by an institution." Amendment effective October 1, 2003.

2001 Amendment: Chapter 36 inserted (3)(c) relating to financing small business, small farm, and agribusiness loans; in (3)(d) at end inserted reference to liquidity management or other banking activities allowable under federal law; in (4) inserted first sentence exempting loans or extensions of credit from federal home loan banks from capital or surplus limitations; and made minor changes in style. Amendment effective March 13, 2001.

1993 Amendment: Chapter 395 at beginning of (1) inserted exception clause and inserted third and fourth sentences providing that security instruments sold under agreement to repurchase do not apply to limit on borrowing and authorizing Division to prohibit excessive amounts of borrowing structured as security instrument sold under agreement to repurchase to single customer or within bank; in (2), at beginning, inserted "Subject to subsections (1) and (3)"; inserted (3) authorizing bank to borrow funds from federal home loan bank for financing home ownership, housing programs, or interest rate risk management and authorizing Division to prevent excessive borrowing; and made minor changes in style.

Case Notes

Conflict With Housing Act of 1975: The specific Housing Act controls over this general statute insofar as the two conflict. State banks may participate in programs under the Housing Act without department approval. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

32-1-414. No certificate of deposit to issue for borrowed money.

Case Notes

Deposit of Fiduciary Funds: When guardian deposited ward's funds in a bank and took a time certificate of deposit, the certificate was not issued "for the purpose of borrowing money" by the bank but rather as an accommodation to a customer. In re Welch's Estate, 100 M 47, 45 P2d 681 (1935).

Purpose of Section: It would seem the purpose of this section is to require banks, if they desire to "borrow" money, to execute the instrument evidencing the debt with the authority and in the manner required in executing a corporate note. That does not prohibit the issuance of certificates of deposit in the ordinary course of banking business. In re Welch's Estate, 100 M 47, 45 P2d 681 (1935).

32-1-421. Investment of capital of savings banks.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In first sentence of (2)(b), after "invested in", substituted "bonds or securities listed in subsection (2)(a)" for "the aforesaid character of securities"; inserted (2)(c) regarding investment in United States government obligations; and made minor changes in phraseology.

32-1-422. Restriction on investment in corporate stock — rulemaking authority.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 75 inserted (2)(b) concerning the acquiring and holding of a percentage of a bank's capital and surplus in the capital stock of a bankers' bank; and made minor changes in style. Amendment effective October 1, 2019.

Chapter 271 in (4) in second sentence near middle deleted "as defined in 35-1-113"; and made minor changes in style. Amendment effective June 1, 2020.

2011 Amendment: Chapter 9 deleted former (2)(c) that read: "(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act"; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 8, Ch. 9, L. 2011, was a saving clause.

2007 Amendment: Chapter 33 in (4) near end of second sentence after "35-1-113" deleted "(9)". Amendment effective October 1, 2007.

2001 Amendment: Chapter 36 in (2)(b) after "federal reserve bank" inserted "and a federal home loan bank"; deleted former (3)(d) that read: "(d) the federal home loan bank"; and made minor changes in style. Amendment effective March 13, 2001.

1999 Amendments — Composite Section: Chapter 100 inserted (2)(d) allowing a bank to acquire and hold for its own account shares of stock or financial interests in an affiliate or subsidiary the business activities of which are limited to those allowed by law for a bank; inserted (3)(d) allowing a bank to invest in the stock of the federal home loan bank; inserted (4) allowing a bank to invest an amount allowed by department rule if the investment serves primarily to promote the public welfare or, with the department's approval, invest in an entity that makes investments for public welfare purposes; in (5) at end inserted sentence providing that the rules relating to investments allowed by subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 410 in (2)(c) substituted "a Montana small business investment capital company" for "the Montana small business investment capital company". Amendment effective April 21, 1999.

Saving Clause: Section 17, Ch. 410, L. 1999, was a saving clause.

Applicability: Section 19, Ch. 410, L. 1999, provided: "[This act] applies to any capital company or small business investment capital company operating prior to or on or organized after [the effective date of this act]." Effective April 21, 1999.

1993 Amendment: Chapter 395 at beginning of (1) inserted exception clause; in (2), at beginning, deleted "Notwithstanding subsection (1)"; in (2)(c), after "company", inserted "or the Montana small business investment capital company"; in (3), after "amount up to", substituted "the limit established by the department" for "5%"; and made minor changes in style.

1989 Amendment: Near beginning of (2), before "bank", deleted "commercial or savings" and after "may" inserted "acquire and hold for its own account"; inserted (2)(b) and (2)(c) relating to bank acquisitions and holdings; inserted (3) relating to bank investments; and made minor changes in phraseology. Section 6, Ch. 199, L. 1989, enacted (4) providing rulemaking authority. Amendment effective March 21, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 199, L. 1989, provided: "A statement of intent is required for this bill because it grants to the department of commerce [now department of administration] authority to make rules relative to allowing a bank to invest in capital stock of certain corporations and removing the limit on certain securities that a bank may hold. In structuring these rules, the department shall consider the provisions of all applicable statutes and rules. Charges allowed may not exceed the actual costs, supported by documentation, incurred in conducting special examinations. The rules must provide adequate safeguards, in the form of substantiation of the fiscal stability of the issuer, to ensure the financial integrity of every quasi-governmental corporation in which an investment is allowed. The rules may also require evaluation to determine suitability of particular investments. Paramount in any rule regarding bank investments must be the safety of depositors funds."

1983 Amendment: Inserted (2) allowing bank to invest in capital stock of a bank service corporation.

Administrative Rules

ARM 2.59.106 Investment in corporate stock.

ARM 2.59.113 Investments by banks to promote public welfare.

32-1-423. Real estate that banks may purchase, hold, or convey.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 257, L. 2023. Amendment effective October 1, 2023.

2003 Amendment: Chapter 105 in (1)(a)(i) near end substituted "detailed written business plan formally adopted" for "business plan adopted"; inserted (1)(b) concerning content of detailed written business plan; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 117 near beginning of (1)(a) increased amount invested from 50% to 100% of paid-up capital and surplus; and made minor changes in style. Amendment effective March 20, 1997.

1993 Amendment: Chapter 395 in (1)(a), at beginning, substituted "its accommodation in the transaction" for "necessary for the proper transaction", near middle, before "carried on", inserted "or is projected to be", and at end, after "business", inserted "provided that property held for future use as a bank office is held pursuant to a business plan adopted by the directors of the bank"; and made minor changes in style.

Administrative Rules

ARM 2.60.303 Capital adequacy of proposed new banks.

32-1-424. Investments of financial institutions.

Compiler's Comments

1993 Amendment: Chapter 395 deleted former (1) and (2) that read: "(1) Trust and investment companies may lease, purchase, hold, and convey all real or personal property necessary to carry on their authorized business, as well as the real or personal property the board of directors considers necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts.

(2) The board of directors of a corporation may invest the capital and assets of the corporation and keep the capital and assets invested in securities to be approved by the board, and the board may make investments of its capital and assets and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or nonnegotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school district of this state or any other state of the United States legally authorized to issue the bonds or warrants, or bonds or obligations of the United States"; and substituted (2) concerning publishing a list of the permissible type of investments for "An investment in United States government obligations as provided in subsection (3)(b) may not be made for a term longer than 5 years".

1989 Amendment: Inserted (3)(b) and (4) regarding investment in United States government obligations; and made minor changes in phraseology.

Administrative Rules

ARM 2.59.112 Investment policies.

Title 2, chapter 59, subchapter 16, ARM Approved investments.

Case Notes

Bank — Transfer of Judgment: A judgment is assignable, and a banking corporation may transfer one owned by it just as it may sell bonds or other securities which it has become the owner of in the ordinary course of business. Genzberger v. Adams, 62 M 430, 205 P 658 (1922).

32-1-425. Definitions.

Compiler's Comments

2013 Amendment: Chapter 123 in definition of fiduciary near beginning substituted "resulting" for "resulting in". Amendment effective October 1, 2013.

Case Notes

Bank's Fiduciary Duty to Borrower: The relationship between a bank and a person to whom it lends money is generally that of creditor and debtor and, as such, does not impose fiduciary duties on the bank except on proof of special circumstances, such as a situation in which the bank acts as an adviser. Security agreements between the bank and the company and its owners were part of the creditor/debtor relationship. The bank merely exercised its rights under the security agreements and the law when it foreclosed on the collateral. Even assuming that the bank owed a fiduciary duty to the company and its owners, there could be no breach of such duty when the bank acted for legitimate business reasons in accordance with the security agreements. Richland Nat'l Bank & Trust v. Swenson, 249 M 410, 816 P2d 1045, 48 St. Rep. 730 (1991).

No Negligence Regarding Repayment Term of Loan: Borrowers argued that bank was negligent in structuring a loan, but they cited no authority to support the proposition that a negligence action may be based on a repayment term of a lawful contract bargained between two parties. Absent the existence of a fiduciary duty, which bank did not have with respect to the loan, the law does not support such a claim. Richland Nat'l Bank & Trust v. Swenson, 249 M 410, 816 P2d 1045, 48 St. Rep. 730 (1991).

32-1-426. Deposit of securities in central depository.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 22, Ch. 23, L. 2023. Amendment effective October 1, 2023.

1997 Amendment: Chapter 536 in (1), at end of first sentence, substituted "30-8-112" for "30-8-102"; in (2), after "custodian for a fiduciary", deleted "acting on July 1, 1977, or who thereafter may act"; and made minor changes in style.

32-1-427. Fiduciaries — deposit of securities with federal reserve bank.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 23, Ch. 23, L. 2023. Amendment effective October 1, 2023.

32-1-429. Insurance activities — exemption — rulemaking.

Compiler's Comments

2011 Amendment: Chapter 138 inserted (3) concerning application and approval for debt cancellation or suspension programs that are not insurance products and the adoption of rules relating to the programs; and made minor changes in style. Amendment effective October 1, 2011.

Effective Date: This section is effective October 1, 1999.

Administrative Rules

Title 2, chapter 59, subchapter 1, ARM Banks.

32-1-430. Authority of state banks to make real estate loans — borrower insurance requirements.

Compiler's Comments

2009 Amendment: Chapter 324 inserted (2) limiting amount of insurance on improvements to real property that can be required by bank on real estate loan; and made minor changes in style. Amendment effective October 1, 2009.

32-1-432. Limitations on loans — rulemaking.

Compiler's Comments

2013 Amendment: Chapter 121 in (8) after "section" inserted language including certain rules; in (9)(b) deleted second sentence that read: "The department may adopt a rule differentiating between discretionary and nondiscretionary contractual commitments"; inserted (9)(c) relating to credit exposure to a person arising from derivative transaction; and made minor changes in style. Amendment effective March 29, 2013.

1999 Amendment: Chapter 100 inserted (7) allowing a state-chartered bank to apply to the department for a waiver of this section's limitations, which would stipulate that the bank is subject to the limitations in 12 U.S.C. 84 and the regulations of the office of the comptroller of the currency, and providing that the waiver is good for 2 years or a different period determined by department rule; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 395 in (1)(a), (1)(c), (2), (4), and (5), after "loan" or "loans", inserted reference to extensions of credit; in (1)(c), before "value", inserted "current market" and after "invested" deleted "or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least 120% of the amount loaned on them"; in (5), after "funds", inserted "or extension of credit"; inserted (7) authorizing Department to adopt rules; inserted (8) defining loan and extension of credit and authorizing Department to adopt rule differentiating between discretionary and nondiscretionary contractual commitments; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 395, L. 1993, provided: "A statement of intent is required for this bill because the bill gives the department of commerce [now department of administration] authority to adopt administrative rules to implement the purposes of the banking laws. The banking and financial division, in consultation with the state banking board, should adopt rules that allow state-chartered banks to operate efficiently and in conformity with the standards and procedures governing national banks. The department shall also adopt rules governing the combination of obligations for lending limit calculation purposes. The rules should address the purpose of the loan, the ultimate common user of funds, the source of repayment, the percentage of ownership, and other relevant considerations.

The rules on loan limitations may include limits or requirements for particular classes or categories of loans or extensions of credit, including a rule governing the combination of obligations for lending limit calculation purposes. These rules may address the purpose of the loan, the ultimate user of the funds, the source of repayment, the percentage of ownership of the entity, and other relevant considerations. The department may determine when a loan putatively made to a person is attributable to another."

1985 Amendment: Inserted (6) providing that the limitations of this section do not apply to the extent a loan is secured by a state agency or board.

1983 Amendment: Inserted (4) providing that the limitations of the section do not apply to the extent a loan is secured by pledged deposits of the lending bank; and inserted (5) providing that the limitations of the section do not apply to a loan made by one bank to another for 2 or fewer business days.

Federal Statute: The Federal Farm Loan Act, referred to in this section, is compiled in the United States Code as Title 12, sec. 641, et seq.

Administrative Rules

Title 2, chapter 59, subchapter 1, ARM Banks.

Case Notes

Illegal Loan Agreement — Bar to Counterclaim: The Supreme Court upheld a District Court's grant of summary judgment, ruling that counterclaims arising out of an illegal loan agreement are barred. Powder River County Bank v. Arness-McGriffin Coal Co., 225 M 358, 732 P2d 1326, 44 St. Rep. 300 (1987).

Bank Acting as Agent in Making Loan: This section did not prohibit a bank from acting as agent for another in making a loan in excess of the statutory limitation and securing a commission for its services in so doing. Sullivan v. Mountain, 117 M 224, 160 P2d 477 (1945).

32-1-433. Investment in certain securities — rulemaking authority.

Compiler's Comments

2013 Amendment: Chapter 121 in (1) inserted second sentence allowing a bank to engage in derivative transactions that national banks may engage in. Amendment effective March 29, 2013.

1989 Amendment: Substituted language in (1) regarding a bank's investment securities (see 1989 Session Law for text) for former language that read: "No commercial bank may purchase, agree to purchase, or underwrite any bond issue in excess of 50% of its unimpaired capital and surplus, except general obligation bonds of the United States, of the state of Montana, or of the cities, towns, counties, or school districts of this state." Section 6, Ch. 199, L. 1989, enacted (2) providing rulemaking authority. Amendment effective March 21, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 199, L. 1989, provided: "A statement of intent is required for this bill because it grants to the department of commerce [now department of administration] authority to make rules relative to allowing a bank to invest in capital stock of certain corporations and removing the limit on certain securities that a bank may hold. In structuring these rules, the department shall consider the provisions of all applicable statutes and rules. Charges allowed may not exceed the actual costs, supported by documentation, incurred in conducting special examinations. The rules must provide adequate safeguards, in the form of substantiation of the fiscal stability of the issuer, to ensure the financial integrity of every quasi-governmental corporation in which an investment is allowed. The rules may also require evaluation to determine suitability of particular investments. Paramount in any rule regarding bank investments must be the safety of depositors funds."

1983 Amendment: Substituted "50% of its unimpaired capital and surplus, except general obligation bonds" for "10% of its assets, except bonds".

Administrative Rules

ARM 2.59.112 Investment policies.

ARM 2.59.129 Credit exposure arising from derivatives and securities financing transactions.

Title 2, chapter 59, subchapter 16, ARM Approved investments.

32-1-437. Acceptance and issuance of drafts — rulemaking authority.

Compiler's Comments

1995 Amendment: Chapter 265 in (2) substituted "may" for "shall"; and made minor changes in style. Amendment effective March 27, 1995.

1989 Amendment: In (1), after "customers", deleted "and to issue letters of credit" and after "accepted" deleted "or letters of credit so issued". Section 6, Ch. 199, L. 1989, enacted (2) providing rulemaking authority. Amendment effective March 21, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 199, L. 1989, provided: "A statement of intent is required for this bill because it grants to the department of commerce [now department of administration] authority to make rules relative to allowing a bank to invest in capital stock of certain corporations and removing the limit on certain securities that a bank may hold. In structuring these rules, the department shall consider the provisions of all applicable statutes and rules. Charges allowed may not exceed the actual costs, supported by documentation, incurred in conducting special examinations. The rules must provide adequate safeguards, in the form of substantiation of the fiscal stability of the issuer, to ensure the financial integrity of every quasi-governmental corporation in which an investment is allowed. The rules may also require evaluation to determine suitability of particular investments. Paramount in any rule regarding bank investments must be the safety of depositors funds."

Case Notes

Cashier's Check — No Trust Relationship: A cashier's check is a draft or bill of exchange, drawn by a bank upon itself or some other bank in which the funds of the former are deposited. The check represents credit which the purchaser of such a check buys. The money paid to the issuing bank becomes its money, as the transaction is one of purchase and sale. No trust relationship is established by the transaction. Montana-Wyoming Ass'n of Credit Men v. Commercial Nat'l Bank, 80 M 174, 259 P 1060 (1927).

32-1-440. Financial institution's responsibility to provide notice when funds become available for withdrawal.

Compiler's Comments

1999 Amendment: Chapter 51 in (2)(b) substituted "automated teller machine" for "automatic teller machine"; deleted former (2)(b) that read: "(b) mailed to each of the financial institution's present customers on or before December 31, 1985"; and made minor changes in style. Amendment effective March 15, 1999.

Section Enacted Without Codification Instruction: Chapter 491, L. 1985, which enacted this section, did not include a codification instruction. The Code Commissioner determined that the logical placement of this section was in Title 32, ch. 1. Because the placement was not directed by codification instruction, technically references to "this chapter" or "Title 32, chapter 1, MCA" in sections 32-1-101 through 32-1-104, 32-1-106, 32-1-109, 32-1-110, 32-1-211, 32-1-235 (now repealed), 32-1-236, 32-1-301, 32-1-302, 32-1-307, 32-1-321, 32-1-322, 32-1-340, 32-1-374, 32-1-402, 32-1-403, 32-1-421, 32-1-423, 32-1-445, 32-1-452, 32-1-455, 32-1-466, 32-1-502 through 32-1-505, 32-1-515, 32-1-533, 32-1-535, 32-1-536, 32-1-538, and 32-1-601 do not include this section.

32-1-445. Demand or time deposits.

Compiler's Comments

1985 Amendment: Decreased number of days from 30 to 7 throughout section.

32-1-446. Safe deposit department.

Compiler's Comments

2005 Amendment: Chapter 163 in three places after "bank" deleted reference to foreign capital depository. Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 in three places inserted reference to foreign capital depository; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

1993 Amendment: Chapter 395 near beginning, after "department", deleted "but shall not invest more than one-tenth of its capital and surplus in such safe deposit department"; and made minor changes in style.

32-1-447. Giving security for deposit prohibited — exceptions.

Case Notes

Public Funds: Section 4767, R.C.M. 1921 (now repealed), made it the duty of the County Treasurer to deposit public funds only in such banks as were designated by the Board of County Commissioners. The Treasurer was to make the deposit upon receipt by him of such securities as were prescribed and approved by the Board as sufficient to safeguard the deposits. The Treasurer was relieved from responsibility for the selection of the depositary. The deposits when commingled with other money of the bank became general deposits. When the bank became insolvent and the securities were insufficient, the county could not claim a preference to the extent of the deficit but could take only as a general creditor. Missoula County v. Lochrie, 83 M 308, 271 P 710 (1928); Missoula v. Dick, 76 M 502, 248 P 193 (1926).

32-1-451. Statement of capital, resources, and liabilities.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-452. Dividends, surplus, losses, and bad debts.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 24, Ch. 23, L. 2023. Amendment effective February 28, 2023.

2019 Amendment: Chapter 75 in (1) in first sentence before "bylaws" inserted "the bank's"; substituted current (2) concerning prior approval for paying a dividend for former text that read: "(2) A dividend larger than the previous 2 years' net earnings may not be declared without giving notice to the division"; inserted (3) regarding suspension of a dividend payment; and made minor changes in style. Amendment effective October 1, 2019.

1993 Amendment: Chapter 395 in last sentence of (1), after "created", deleted "and nothing herein contained shall be construed as prohibitory thereof"; substituted (2) limiting dividend to amount not larger than the previous 2 years' net earnings for former text that read: "No dividend shall be declared or paid while there shall remain among the ledger assets of the bank any item which shall properly be classified as a bad debt. Under the terms of this section and before any dividend can be paid, all debts due a bank on which the interest is past due and unpaid for a period of 12 months after maturity, unless the same be well secured or in legal process of collection, and all judgments held by the bank after 2 years from the date of rendition, exclusive of time consumed in appeal, unless payments have been made, shall be considered bad debts. Such bad debts as hereinbefore defined shall be charged off the books of such bank before any dividend is declared"; and made minor changes in style.

32-1-453. Calculation of profits.

Compiler's Comments

1997 Amendment: Chapter 42 after "past due" deleted "as defined by 32-1-452"; and made minor changes in style. Amendment effective March 12, 1997.

32-1-455. Reserve requirements.

Compiler's Comments

1993 Amendment: Chapter 395 at end of (1) substituted "required by the appropriate federal regulator" for "shall be determined by the department as provided in this section, of which reserve a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks"; in (2), after "establish", substituted "reserve requirements if the federal regulator discontinues reserve requirements" for "raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in its judgment banking conditions may justify. The power to establish, raise, or lower reserves is limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system and not less than 75% of those reserve requirements for members of the federal reserve system"; in (3), after "reserve", substituted "as the department requires by rule" for "of the percentage or percentages as the department shall determine from time to time, which shall not be less than the percentages specified in this section of its deposit liabilities, of which a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks"; in (4), after "surplus", substituted "as the department requires by rule" for "$300,000"; in (6), after "below the", substituted "legal requirements" for "amount required by this section"; and made minor changes in style.

Administrative Rules

ARM 2.59.101 Banks — reserve requirements.
ARM 2.59.102 Banks — direct leasing of personal property.

32-1-461. Bonding of employees.

Compiler's Comments

2005 Amendment: Chapter 163 in (1) in two places and in (4) after "bank" deleted "or foreign capital depository"; and in (3) after "bank" deleted "or the chief executive officer of the foreign capital depository". Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 in (1), in two places, inserted reference to foreign capital depository; in (3), after "bank", substituted "or the chief executive officer of the foreign capital depository and the president's or executive officer's" for "and his"; in (4), in first sentence after "bank", inserted "or foreign capital depository"; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

Case Notes

Who Entitled to Benefit: The acts of the former majority stockholder of a bank, while he was an officer of the bank, caused notes held by the bank to become worthless. During his time as an officer, the bank purchased blanket bonds covering its employees and transactions. The worthless notes were paid under the blanket bonds. The former majority stockholder was not entitled to the benefit from the payment of insurance under the bonds, despite his contention that he sold his interest in the bank at a lower price than other stockholders and at a lower price than he would have otherwise received because the notes in question were considered worthless. Magelssen v. Mouat, 167 M 374, 538 P2d 1015 (1975).

32-1-462. Persons previously convicted under banking laws — bank employment.

Compiler's Comments

2005 Amendment: Chapter 163 in three places after "bank" deleted reference to foreign capital depository. Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 in three places, after "bank", inserted reference to foreign capital depository; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

32-1-463. Sale of securities by officer to bank.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-464. Fraud by director, officer, agent, or employee.

Compiler's Comments

2005 Amendment: Chapter 163 in three places after "bank" deleted reference to foreign capital depository. Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 in introductory clause, before "officer", inserted "executive" and after "bank" inserted "or a foreign capital depository"; in (1), near beginning after "receives or", substituted "takes possession of any bank or foreign capital depository property, except" for "possesses himself of any of its property, otherwise than"; in (3), after "books of that", substituted "bank or foreign capital depository" for "corporation"; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

Case Notes

Procedurally Improper and Unsubstantiated Claim of Bank Alteration of Records: In an attorney's action against a bank for breach of a covenant of good faith and fair dealing, the attorney filed a motion for summary judgment in which he for the first time claimed that the bank had altered his banking records and that the alterations made it liable as a matter of law and precluded summary judgment for the bank. He presented no evidence of alteration, did not modify his complaint to add the alteration claim, attempted to have his expert on the alleged alteration added to the witness list a month after the deadline for presentation of expert witness lists, and submitted, on appeal, letters from his expert that were not part of the record below. He presented no legal authority under which the bank's alleged actions and manner of keeping his records were illegal. It was not error to deny his motion. Cate v. First Bank (N.A.)-Billings, 262 M 429, 865 P2d 277, 50 St. Rep. 1624 (1993).

Officer as Fiduciary: An officer or director of a bank stands in a fiduciary relation to it. He is not permitted to profit because of his position as such. He may engage in ordinary business transactions with or through the bank, provided his dealings are fair and he takes no unfair advantage of his fiduciary relationship. Here, when the officer was assigned a mortgage on lands executed to the bank, the inadequacy of the value of the land as security for the mortgage was not alone sufficient to establish fraud. Duffy v. Hastings, 78 M 22, 252 P 316 (1926).

32-1-465. Limit on loans to officer, director, or principal shareholder.

Compiler's Comments

1995 Amendment: Chapter 265 in (2), at beginning before "bank", deleted "member". Amendment effective March 27, 1995.

1993 Amendment: Chapter 395 substituted current text relating to limits on loans to officer, director, or principal shareholder for former language that read: "An officer, director, agent, teller, clerk, or employee of a bank is guilty of a misdemeanor if that person:

(1) knowingly overdraws his account with such bank and thereby obtains the money, notes, or funds of any such bank; or

(2) asks or receives or consents or agrees to receive any commission, premium on insurance, emolument, gratuity, reward, money, property, or thing of value for his own personal benefit or personal advantage for procuring or endeavoring to procure for any person, firm, or corporation any loan from or the purchase or discount of any paper, note, draft, check, or bill of exchange by such bank or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank."

Administrative Rules

ARM 2.59.109 Loans to managing officer, officer, director, or principal shareholder of bank.

Case Notes

Commission for Procuring Loan: This section prohibiting a bank officer from receiving a commission for procuring a loan from the bank with which the officer is connected did not prohibit the bank from charging a commission for services rendered as an agent in procuring the loan from another bank. (See 1993 amendment.) Sullivan v. Mountain, 117 M 224, 160 P2d 447 (1945), explained in Noble v. Farmers Union Trading Co., 123 M 518, 216 P2d 925 (1950).

32-1-466. Purchase of obligation of bank by officer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Acquiring Land on Mortgage Foreclosure: The value of land acquired on mortgage foreclosure sale was the amount of the bank's investment, not the amount at which it was carried on the bank's books after $2,000 of the debt due had been charged off as a loss. Charging items off the books as doubtful paper amounts only to reclassification of assets, and they may not be transferred or conveyed except for a valuable consideration. Johnson v. Kaiser, 104 M 261, 65 P2d 1179 (1937).

Buying Through Third Person: Where bank president, acting for the bank, executed a quitclaim deed to a third person for $1 consideration, who in turn executed a like deed to the president for a like consideration, judgment declaring the transaction void was affirmed under the facts considered. Johnson v. Kaiser, 104 M 261, 65 P2d 1179 (1937).

Setting Aside Transfer: An officer dealing privately with the bank acts in a fiduciary relation calling for the utmost fairness and candor, and when attacked the burden is on him to show dealings were fair and honest. Disputable presumptions that a person is innocent of wrong, transactions have been fair and legal, ordinary course of business has been followed, and the law has been obeyed, relied upon by defendant in action to set aside fraudulent conveyance, fade away in the face of contrary facts satisfactorily established. Johnson v. Kaiser, 104 M 261, 65 P2d 1179 (1937).

32-1-467. Loans to managing officer.

Compiler's Comments

1993 Special Session Amendment: Chapter 17 in four places, after references to managing officer, deleted references to director. Amendment effective December 23, 1993.

1993 Amendment: Chapter 395 substituted current text relating to loans to managing officer or director for former language that read: "No bank shall make a loan to any managing officer of such bank without taking good collateral or other ample and specific security therefor. When such loan or a loan made to a director of such bank, banking institution, or trust company exceeds in amount 10% of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution, or trust company, which approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto and be and remain a permanent record of such bank."

Administrative Rules

ARM 2.59.109 Loans to managing officer, officer, director, or principal shareholder of bank.

32-1-468. Removal of directors, officers, or employees — hearing.

Compiler's Comments

2019 Amendment: Chapter 75 in (1) in middle of first sentence after "incompetent" inserted "or to have violated 32-1-325, 32-1-464, 32-1-472, or 32-1-473" and near end of second sentence substituted "the board of directors" for "them"; inserted (2) concerning a request for hearing filed pursuant to the Montana Administrative Procedure Act"; and made minor changes in style. Amendment effective October 1, 2019.

2005 Amendment: Chapter 163 in first sentence near beginning after "bank" deleted "or foreign capital depository" and near end after "bank" deleted "or depository". Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 in first sentence, near beginning after "bank", inserted "or foreign capital depository who is" and near end, after "bank", inserted "or depository"; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

32-1-471. Penalty for unlawful hypothecation of property received.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-473. Theft of funds by directors, officers, or employees.

Compiler's Comments

2005 Amendment: Chapter 163 in first sentence near beginning after "bank" deleted "or foreign capital depository"; and in four places after "bank" deleted "or depository". Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 throughout section, in five places after "bank", inserted reference to a foreign capital depository, near beginning deleted "banker", near end, after "abets any", inserted "director", and after "officer" deleted "clerk"; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Case Notes

Misapplication of Funds: An officer of a national bank was indicted on a charge that a fund to his credit in a special account was transferred to his general account and applied to an overdraft. The court held that this charge did not state facts constituting a willful misapplication of the funds of the bank under the federal law governing federal reserve banks. Craig v. U.S., 5 F2d 275 (9th Cir. 1925).

32-1-474. False statement to obtain loan.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-481. Bank holidays.

Compiler's Comments

1983 Amendment: Substituted entire text (see 1983 Session Law) for former provision, which read: "(1) Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

(a) Each Sunday;
(b) New Year's Day, January 1;
(c) Memorial Day, the last Monday in May;
(d) Independence Day, July 4;
(e) Labor Day, the first Monday in September;
(f) Thanksgiving Day, the fourth Thursday in November;
(g) Christmas Day, December 25;
(h) On such days as banks are closed in accordance with 32-1-561 to 32-1-565, as amended.

(2) Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, November 11, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located."

Case Notes

City Ordinance: As more than 60 holidays during the year were provided for by this section, an ordinance making it unlawful to keep open a pawnshop, loan office, or secondhand store after 6 p.m. except on days preceding a holiday, when they could be kept open until 10 p.m., was held reasonable in the absence of clear proof to the contrary. Butte v. Paltrovich, 30 M 18, 75 P 521 (1904).

32-1-483. Closing on Saturdays authorized — Saturday treated as holiday.

Attorney General's Opinions

Saturday as Banking Day: Saturday should not be considered a banking day for the purpose of determining midnight deadlines for banks open on Saturday for limited teller-type transactions. 36 A.G. Op. 91 (1976).

32-1-484. Banking hours and business days.

Compiler's Comments

1993 Amendment: Chapter 395 substituted current text relating to banking hours and business days for former language that read: "(1) At any regular or special meeting of its board of directors, any bank, as herein defined, and any national bank or national banking association and any federal reserve bank may, at any time, enact or amend bylaws to provide for its banking hours or business days or to change its banking hours or business days, including remaining closed or closing on any Saturdays.

(2) Any such bank enacting a bylaw or amending any bylaw with respect to such subject matter shall give reasonable notice to the public of the enactment of a new bylaw or amendment of bylaws by:

(a) posting an announcement in the lobby of the bank, incorporating the text of the bylaw or of the amended bylaw and advising of the date the same becomes effective; or

(b) mailing a copy of such notice to each of the bank's customers as of the date of the adoption of such bylaw or amendment; and

(c) in addition to posting or mailing, publishing such notice not less than once in each week for 2 weeks in any newspaper of general circulation in the county wherein such bank has its office.

(3) In any event such notice, whether posted and published or mailed and published, shall be given at least 14 days in advance of the effective date of the bylaw or amended bylaw."

32-1-491. Destruction of records.

Compiler's Comments

2005 Amendment: Chapter 163 in (1) in first sentence near beginning after "Banks" deleted "and foreign capital depositories", in second sentence after "bank" deleted "or foreign capital depository", and in third sentence after "bank" deleted "or depository"; and made minor changes in style. Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 in (1), in three places after reference to bank, inserted reference to foreign capital depository; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

1983 Amendment: In (1) substituted "Banks are required to preserve or keep their records of customer accounts for at least 8 years" for "Banks shall not be required to preserve or keep their records for a longer period than 11 years"; in first sentence of (1) substituted last "records" for "ledger sheets"; and inserted (2) directing Department to adopt rules providing for retention schedules for bank records other than those listed in subsection (1).

1983 Statement of Intent: The statement of intent attached to Ch. 314, L. 1983 (HB 480), provided: "House Bill 480 requires a statement of intent because [subsection] (2) [of section 1] of the bill provides that the Department of Commerce [now Department of Administration] adopt rules with respect to retention schedules for bank records.

It is the intention of the legislature that the Department of Commerce [now Department of Administration] review with banks and related interests, where possible, problems related to the retention of bank records. In promulgating the rules with respect to this act, the department should take into account the space and record retention limitations of the banks as well as the need to maintain records which may be of importance to bank customers."

Administrative Rules

ARM 2.59.111 Retention of bank records.

32-1-492. Definitions — reproduction of bank records — admissibility in evidence — cost recovery.

Compiler's Comments

2005 Amendment: Chapter 163 deleted former (6) that read: "(6) The reproduction of records of a foreign capital depository is subject to the provisions of Title 32, chapter 8, part 5"; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendment: Chapter 100 inserted (7) allowing a bank to charge the costs of locating, reproducing, and providing bank records for a third party in regard to a legal procedure. Amendment effective October 1, 1999.

1997 Amendments — Composite Section: Chapter 237 inserted (1) defining bank records and electronic storage; in (4), near beginning, inserted reference to subsection (3); in (5), at end after "course of business", deleted "after July 1, 1951"; and made minor changes in style.

Chapter 382 in (2), at beginning, inserted exception clause; inserted (6) regarding reproduction of records of a foreign capital depository; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

Case Notes

Checking Account Records: In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, bank records of decedent's checking account were properly admitted as evidence. Olson v. McLean, 132 M 111, 313 P2d 1039 (1957).

Part 5
Dissolution, Closing, and Liquidation

Part Compiler's Comments

Section Not Codified: Section 5-1122, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 142, Ch. 89, L. 1927.

Part Case Notes

Farm Credit Administration Not Empowered to Abate Existing Lawsuits in Cases of Liquidation: Although 12 U.S.C. 2183(b) gives the Farm Credit Administration (FCA) power to provide for liquidation of a production credit association (PCA), it does not expressly empower the FCA to abate existing lawsuits; therefore, a motion by PCA to dismiss on the ground that the proceedings were barred or stayed due to PCA liquidation was denied. Jacobson v. W. Mont. Prod. Credit Ass'n, 643 F. Supp. 391, 43 St. Rep. 1598 (D.C. Mont. 1986).

32-1-501. Dissolution and disincorporation.

Compiler's Comments

2005 Amendment: Chapter 163 throughout section after "trust company" deleted "or foreign capital depository" and in first sentence near middle after "investment companies" deleted "and foreign capital depositories"; and made minor changes in style. Amendment effective October 1, 2005.

1997 Amendment: Chapter 382 in first sentence, after "investment companies", inserted "and foreign capital depositories", in second and third sentences, after "trust company", inserted "or foreign capital depository", and in two places in fourth sentence and in fifth sentence, after "bank", inserted "trust company, or foreign capital depository"; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce [now department of administration] authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce [now department of administration] bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

32-1-505. Penalty for receiving deposits when insolvent or for making false statements.

Compiler's Comments

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

32-1-506. Assessment on capital stock to make good impairment.

Compiler's Comments

2019 Amendment: Chapter 75 in (5) substituted "common courier with tracking capability" for "certified mail" and before "cashier" substituted "the bank's" for "its"; in (7)(b) after "delivered to the" inserted "purchaser"; in (8) substituted "records" for "books"; in (10) substituted " assessment that is owed" for "assessment on it"; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 49 in (4) in second sentence substituted "14 days" for "10 days"; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Notice of Meetings — Prescribed Method to Be Followed: When the mode of giving notice of a corporation's meetings is prescribed by statute or its bylaws and a stockholder is not notified in accordance therewith, the action of the meeting is not binding upon him, as only strict compliance with the prescribed method will suffice. Here, section 6109(d), R.C.M. 1921 (now repealed), and a state bank's bylaws required written notice to its stockholders of a special meeting to devise ways of making good an impairment of the bank's capital stock. Notice was required to be mailed to the stockholder's last known residence. Notice was mailed to the stockholder's attorney who resided in a different city. The stockholder did not participate in the meeting. A sale of his stock on nonpayment of an assessment levied against it pursuant to action taken at the meeting was void. Home St. Bank of Manhattan v. Swartz, 77 M 566, 252 P 366 (1926).

32-1-507. Power of closed banks to borrow money from governmental agencies.

Compiler's Comments

1993 Amendment: Chapter 395 at beginning of (1) inserted exception clause and after "located" deleted "and notwithstanding any other law"; inserted (2) providing that reporting and District Court approval requirements do not apply if Federal Deposit Insurance Corporation is appointed as liquidating agent; and made minor changes in style.

32-1-510. Penalty for maliciously declaring bank insolvent.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

32-1-512. Effect of posting notice.

Case Notes

Action to Establish Claim as Preferred Against Superintendent of Banks: An action to recover on a preferred claim against an insolvent bank may, under this section and 32-1-515, be brought against the Superintendent of Banks (now Department of Administration), as against the contention that it must be brought against the bank. Caterpillar Tractor Co. v. Johnson, 99 M 269, 43 P2d 670 (1935).

32-1-513. Taking possession of bank — notice.

Compiler's Comments

1993 Amendment: Chapter 395 near middle, after "notify", deleted "at once" and after "personally" inserted "by mail"; and made minor changes in style.

32-1-515. Powers of department on closing bank — court proceedings.

Compiler's Comments

1993 Amendment: Chapter 395 in (4)(a), in first sentence after "court", deleted "in chambers"; in (4)(b) deleted second sentence that read: "If no officer can be found in the county, then the notice shall be posted in three public places in the county for at least 10 days before the day of hearing"; deleted (4)(c) that read: "(c) The hearing of an application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the bank has had 5 days' notice of the application or the notice has been posted for at least 10 days"; inserted (5) providing that subsection (4) does not apply if Federal Deposit Insurance Corporation is appointed as liquidating agent; and made minor changes in style.

Case Notes

Liquidating Officer Distinguished From Receiver: Except when the statute provides otherwise, the liquidating officer of an insolvent bank is not required to consult the court in charge of the liquidation; he acts as a state officer by authority of the statute and not by virtue of an appointment by the court, and in this respect his status differs from that of a receiver. Merchants Nat'l Bank Bldg. v. Farmers St. Bank of Cut Bank, 111 M 559, 111 P2d 806 (1941).

Venue of Action Against Liquidating Officer to Enforce Payment of Claim: An action against the liquidating officer of an insolvent bank based upon his refusal to pay an adjudicated claim against the bank was properly commenced in the county where payment was refused. Merchants Nat'l Bank Bldg. v. Farmers St. Bank of Cut Bank, 111 M 559, 111 P2d 806 (1941).

Unauthorized Sale of Assets: The receiver or liquidating officer of a state bank being merely an administrative officer of the court appointing him has no original or inherent authority, but whatever power he possesses comes from the court or from statute or such as may reasonably or necessarily be implied from such orders or statutes by which his express power is defined. Parcells v. Price, 110 M 537, 104 P2d 12 (1940).

Action to Establish Claim as Preferred Against Superintendent of Banks: An action to recover on a preferred claim against an insolvent bank may, under 32-1-512 and this section, be brought against the Superintendent of Banks (now Department of Administration), as against the contention that it must be brought against the bank. Caterpillar Tractor Co. v. Johnson, 99 M 269, 43 P2d 670 (1935).

32-1-516. Recourse of aggrieved bank — injunction.

Compiler's Comments

2013 Amendment: Chapter 49 in (1) substituted "14 days" for "10 days". Amendment effective October 1, 2013.

32-1-518. Compensation of agents and attorneys.

Compiler's Comments

1993 Amendment: Chapter 395 in (1), at beginning of first sentence, inserted exception clause and at end, after "department", deleted "but subject to approval by the judge of the district court of the county in which the bank is located, on notice of the bank" and at beginning of fourth sentence deleted "When the compensation has been fixed and approved and the services rendered"; inserted (2) providing that reporting and District Court approval requirements do not apply if Federal Deposit Insurance Corporation is appointed liquidating agent; and made minor changes in style.

32-1-531. Notice to creditors of insolvent bank.

Compiler's Comments

1993 Amendment: Chapter 395 at beginning of (1) inserted exception clause; inserted (2) providing that subsection (1) is inapplicable if the Federal Deposit Insurance Corporation is appointed liquidating agent and requiring notification of creditors; and made minor changes in style.

32-1-532. Claims — allowance and rejection.

Compiler's Comments

2019 Amendment: Chapter 75 in (2) near middle substituted "common courier with tracking capability" for "certified mail"; and made minor changes in style. Amendment effective October 1, 2019.

1993 Amendment: Chapter 395 at beginning of (1) inserted exception clause; in (3), at end of first sentence after "service", deleted "to fix the amount of the claim and its order of priority or either" and in second sentence, after "allowance", deleted "either as to priority or amount" and after "taken" deleted "to the district court of that county"; inserted (6) providing that if Federal Deposit Insurance Corporation is appointed liquidating agent, subsections (1) through (5) are inapplicable and requiring notification of creditors; and made minor changes in style.

Case Notes

Trust Funds — Preferences: A sum of money was delivered to a bank under a trust agreement providing that interest thereon should be paid to two trustees for the benefit of the prison band. The trustees were, under this section, parties in interest who could on the insolvency of the bank bring action to have the amount of the principal trust fund allowed as a preferred claim, even though the claim was filed with the Superintendent of Banks (now Department of Administration) in the name of the creator of the trust. Conley v. Johnson, 101 M 376, 54 P2d 585 (1936).

Duty to Inform of Allowance of Claim: When a creditor of an insolvent bank asserts that his claim against it is a preferred one and the Superintendent of Banks (now Department of Administration) acting as liquidating officer of such bank rejects it, he should advise the claimant that the claim will be allowed as a general one. In this case an action was brought to compel allowance of the claim as preferred. The liquidating officer did not state at the hearing that the claim would be allowed as a general claim. It was improper under these circumstances to award costs to the liquidating officer, although he was awarded judgment. Powell Bldg. & Loan Ass'n v. Larabie Bros. Bankers, Inc., 100 M 183, 46 P2d 697 (1935).

Time Within Which Action to Be Commenced: One dissatisfied with the action of the Superintendent of Banks (now Department of Administration) acting as liquidating officer of an insolvent bank in rejecting his alleged preferred claim against the bank must bring action within 90 days after service of notice of such rejection. Notice to attorneys is notice to claimant, and an action not begun until after the expiration of the 90-day period cannot be maintained. Caterpillar Tractor Co. v. Johnson, 99 M 269, 43 P2d 670 (1935).

Funds Held at Court's Order: The receiver of an insolvent bank was directed by the court to hold money collected upon checks and drafts not received for collection until after the close of the bank in a special fund until the right of the claimant thereto could be determined. The successful claimant was not entitled to interest on the funds while in the hands of the receiver. St. v. Banking Corp. of Mont., 74 M 491, 241 P 626 (1925).

32-1-534. Claims — order of payment — priorities.

Compiler's Comments

1993 Amendment: Chapter 395 in (1)(d), after "certified checks", deleted "contractual liabilities"; and made minor changes in style.

Case Notes

Preferred Claim, What Constitutes:

To constitute a preferred claim to funds in an insolvent bank, transaction must create relation of principal and agent between depositor and the bank and not that of creditor and debtor. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Larabie Bros. Bankers, Inc., 103 M 126, 61 P2d 823 (1936).

A state bank exercising the powers of a trust company has specific authority to receive money in trust and may allow an agreed rate of interest thereon. Such funds maintain a preference claim upon insolvency of a bank. Conley v. Johnson, 101 M 376, 54 P2d 585 (1936).

Liquidating Officer as Fiduciary: The state Superintendent of Banks (now Department of Administration), as statutory trustee of the assets of a closed bank, has the duty to administer the trust with utmost honesty and good faith. He must use reasonable skill, diligence, and discretion on behalf of depositors first and stockholders second. When he defaults in this duty, liability arises in favor of depositor-creditors which cannot be nullified by the court. No payment can be made to stockholders until depositors are paid in full. Binsfield v. Johnson, 6 F. Supp. 29 (D.C. Mont. 1934).

Method of Collection Determinative: Plaintiff had been a depositor in Columbus State Bank for many years and during that time had permitted the bank to make collections on negotiable paper purchased by him from the bank. The bank would credit his account, and he would receive a duplicate deposit slip. He did not object to having a mortgage note on livestock, which gave rise to this action, handled in the same manner. These facts were sufficient to support a finding that the method pursued by plaintiff established him as a general creditor and that the deposit under the mortgage did not constitute a trust fund. In re Columbus St. Bank, 95 M 332, 26 P2d 643 (1933).

Customary Practice Determinative: A foreign company employed a local bank to act as its collecting agent in the community in which the bank did business. It directed the bank to make remittances by draft every third day, without requesting that it hold the funds intact in the meantime. It was presumed that the corporation had knowledge of the well-known custom of banks to mingle the collections with the other funds of the bank. This resulted in a general and not a special deposit. The relation of debtor and creditor was thereby created, depriving the creditor of the right to claim a preference upon the bank's becoming insolvent. Montana-Dakota Power Co. v. Johnson, 95 M 16, 23 P2d 956 (1933).

Transfer of Assets Due to Impairment: A bank in need of funds to make good an impairment of its capital stock transferred certain questionable assets to its vice-president at their face value. He in accordance with a resolution of the directors secured a loan on his note, which was guaranteed by certain stockholders of the bank. The money was placed to the bank's credit. The transaction was not an absolute sale of the assets. The guaranteeing stockholder bringing this suit was entitled to reimbursement by the bank or, upon its suspension, to have his claim as one of its general creditors approved by the receiver. Lyon v. Featherman, 80 M 504, 261 P 268 (1927).

Special Deposit Must Be Indicated: A deposit in a bank of trust funds, known to the bank to be such, there being nothing, however, to indicate that it is intended as a special deposit, does not of itself make the bank a trustee of the fund for the benefit of the cestui que trust. The cestui que trust has no preference over the general creditors of the bank in case of its suspension. The deposit is a general one of which the bank becomes the owner. The transaction creates the relationship of debtor and creditor between the bank and the depositor. Montana-Wyoming Ass'n of Credit Men v. Commercial Nat'l Bank, 80 M 174, 259 P 1060 (1927).

Tracing of Funds: A promissory note was left with a bank for collection prior to its insolvency. Collection on the note was made. The owner sought to establish a preference claim for the amount of the collection on the theory that it constituted a trust fund. So long as it can be shown that a balance equal to the trust fund remains in the bank, the money collected was retained by it, and the money constituted an integral part of the bank's money which passed into the hands of the receiver, the claim is established. McDonald v. Am. Bank & Trust Co., 79 M 233, 255 P 733 (1927).

Depositor as Creditor: A general depositor in a bank is merely a general creditor and is not entitled to any preference over other general creditors when the bank becomes insolvent or goes into voluntary liquidation. Rohr v. Stanton Trust & Sav. Bank, 76 M 248, 245 P 947 (1926).

Trust Funds: A deposit of trust funds with the knowledge of the bank that they are such does not in and of itself make the deposit a special deposit. Deposits for a specified time for which the bank issues a certificate of deposit constitute general deposits. Upon the failure of the bank, the depositor becomes a general creditor. Pethybridge v. First St. Bank of Livingston, 75 M 173, 243 P 569 (1926), followed in Lashorn v. First St. Bank of Livingston, 75 M 184, 243 P 573 (1926).

Principal and Agent Relationship Required: A person seeking to establish a preference claim to funds in the hands of the receiver of an insolvent bank must show that the transaction upon which he relies created the relation of principal and agent. He must show that by the transaction, the assets of the bank were augmented and be able to trace the trust fund into the possession of the bank. Failure to show either one of these conditions defeats his action. Calif. Packing Corp. v. McClintock, 75 M 72, 241 P 1077 (1925), followed in McDonald v. Am. Bank & Trust Co., 79 M 233, 255 P 733 (1927), and Montana-Dakota Power Co. v. Johnson, 95 M 16, 23 P2d 956 (1933).

Creation of Trust Relationship: A draft was forwarded to a bank for collection, with instructions to remit the proceeds upon collection. When the amount was collected, the relation of agent and principal and not that of debtor and creditor existed between the bank and the owner. The collection and retention of the money by the bank created the relationship of trustee and beneficiary. The beneficiary was entitled, upon the bank becoming insolvent, to a preferential right to the proceeds, provided he could show the proceeds augmented the bank's assets and could trace the proceeds into the hands of the receiver. Hawaiian Pineapple Co. v. Browne, 69 M 140, 220 P 1114 (1923).

Law Review Articles

Trust or Debt? A Review of Montana Decisions, Castoldi, 13 Mont. L. Rev. 93 (1952).

32-1-535. Claims — partial payments — assignments.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-537. Disposition of unclaimed funds.

Compiler's Comments

1997 Amendment: Chapter 422 in (3) deleted former last sentence that read: "The money deposited in the general fund pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of paying approved claims." Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 in (3), in third sentence, substituted "state treasurer" for "auditor". Amendment effective July 1, 1995.

1993 Amendment: Chapter 395 in (3), in fourth sentence, at end, substituted "pay the claim to the depositor or creditor" for "transmit the claim to the legislature with a statement of its approval" and inserted last sentence relating to statutory appropriation; and made minor changes in style.

32-1-538. Disposition of assets remaining after payment of claims.

Compiler's Comments

1993 Amendment: Chapter 395 at beginning of first sentence of (1) inserted exception clause and in second sentence, after "court", deleted "in open court or in chambers"; in (3), after "time", deleted "in court or in chambers, as the court may order"; inserted (4) providing that if Federal Deposit Insurance Corporation is appointed liquidating agent, reporting and District Court approval requirements are inapplicable; and made minor changes in style.

32-1-551. Liquidating officer's powers and duties.

Compiler's Comments

1993 Amendment: Chapter 395 at beginning of (1) and (2) inserted exception clause; near middle of first sentence of (1), after "officer", deleted "duly qualified under the laws"; inserted (3) providing that if Federal Deposit Insurance Corporation is appointed liquidating agent, reporting and District Court approval requirements are inapplicable; and made minor changes in style.

Case Notes

Liquidating Officer — Distinguished From Receiver: The liquidating officer of an insolvent bank is not required to consult the court in charge of the liquidation, except where the statute provides otherwise. The liquidating officer differs from a receiver in that he acts as a state officer by authority of statute and not by virtue of an appointment by the court. Merchants Nat'l Bank Bldg. v. Farmers St. Bank of Cut Bank, 111 M 559, 111 P2d 806 (1941).

When Stockholders' Liability Enforceable: The assets of an insolvent bank were insufficient to pay all its liabilities. The receiver in charge enforced the stockholders' liability under section 6036, R.C.M. 1921 (now repealed). This could be done before all the assets of the bank had been disposed of and the proceeds applied toward the satisfaction of creditors' claims. Skarie v. Marron, 78 M 295, 253 P 895 (1927).

32-1-552. Further duties of liquidating officer.

Compiler's Comments

1993 Amendment: Chapter 395 in (2), before "time", deleted "question of the"; in (3), before "32-1-551", deleted "32-1-333 and"; and made minor changes in style.

32-1-553. Department to file inventory — report required — exception.

Compiler's Comments

1993 Amendment: Chapter 395 in (1), at beginning, inserted exception clause; inserted (2) providing that subsection (1) is inapplicable if Federal Deposit Insurance Corporation is appointed liquidating agent; and made minor changes in style.

32-1-561. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 25, Ch. 23, L. 2023. Amendment effective February 28, 2023.

32-1-563. Powers of officers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 26, Ch. 23, L. 2023. Amendment effective February 28, 2023.

32-1-564. Notice of bank closing.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 27, Ch. 23, L. 2023. Amendment effective February 28, 2023.

Part 6
Federal Deposit Insurance Corporation

32-1-602. Banking institutions empowered to receive federal deposit insurance corporation aid.

Compiler's Comments

Federal Statute: The Federal Deposit Insurance Act referred to in this section is compiled in the United States Code as Title 12, sec. 1811 through 1835a.

32-1-606. Closed banking institutions empowered to borrow from corporation.

Compiler's Comments

1993 Amendment: Chapter 395 in middle of first sentence, after "agent", deleted "with the permission of the court having jurisdiction" and in second sentence, near beginning after "department", deleted "upon the order of a district court of competent jurisdiction"; and made minor changes in style.

Part 7
Uniform Common Trust Act

Part Commissioners' Note

A common trust fund is a group of securities set aside by a trustee for investment by two or more trusts operated by the same trustee. It is almost invariably used by banks and trust companies, and not by individual trustees.

The purposes of such a common or joint investment fund are to diversify the investments of the several trusts and thus spread the risk of loss, and to make it easy to invest any amount of trust funds quickly and with a small amount of trouble.

Such a common trust fund cannot legally be operated without statutory sanction, because its operation involves a mixture of trust funds which was not permitted by doctrines of equity. There is a strong sentiment among trust men that the great utility of these common trust funds justifies a statutory exception to the rule regarding the mixture of two or more trust funds.

The Uniform Common Trust Fund Act is a simple enabling statute suitable for adoption by any state which is willing to permit banks and trust companies to set up one or more common trust funds. The Uniform Act does not set out in detail the restrictions on the operation of such common trust funds, except that they must be composed of investments legal for trusts in that state. The reason for not covering in this proposed Uniform State Act the details of the operation of such a common trust fund is that as a practical matter such details are covered by the regulations issued by the Federal Reserve Board which went into effect December 31, 1937.

The Federal Revenue Act of 1936, § 169 [see 26 U.S.C.A.Int.Rev. Code § 584] provides that a common trust fund shall be taxed as an association on its income unless it is operated in accordance with the regulations issued by the Federal Reserve Board. Consequently, every bank or trust company, whether a national or a state institution, will have to operate its common trust funds in accordance with the Federal Reserve Board regulations if it wants to escape the federal corporation income tax, and the difference between such tax and the individual income taxes assessed against the different beneficiaries of the trusts would be so great that no trustee could afford to operate its fund otherwise than in accordance with the Federal Reserve Board regulations.

Therefore, the passage by a state of the Uniform Common Trust Fund Act will enable banks and trust companies in that state to set up one or more common trust funds composed entirely of legal trust investments for its fiduciary funds, these common trust funds necessarily being subject to restrictions and regulations of the Federal Reserve Board as they exist from time to time.

Part Compiler's Comments

Section Not Codified: Section 5-1405, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 5, Ch. 64, L. 1955.

32-1-701. Short title.

Compiler's Comments

Source: Section 4, Uniform Common Trust Fund Act.

Montana Changes: Montana has deleted the word "Fund" from the Uniform Common Trust Fund Act.

32-1-702. Application.

Compiler's Comments

Source: Section 7, Uniform Common Trust Fund Act.

32-1-703. Common trust fund allowed.

Compiler's Comments

1981 Amendment: Divided the section into subsections; changed "A" to "Any" in the first sentence; inserted "and administer" following "establish" and "composed of property permitted by law for the investment of trust funds" in (1); inserted (1)(c) relating to furnishing investments to any affiliated bank or trust company as fiduciary; inserted (1)(d) relating to furnishing investments to any affiliated bank or trust company and others as cofiduciaries; inserted (1)(e) relating to furnishing investments to any combination of the entities listed in subsections (1)(a) through (1)(d); substituted "Any bank or trust company" for "It" at the beginning of (2); substituted "funds administered by itself or by any affiliated bank or trust company" for "fund" in the first sentence of (2); inserted "or statute" following "order" in (2); inserted "and governing such" following "creating" in (2); deleted "cofiduciary or" following "consent of its" in (2); deleted the last sentence of the section that read "A bank or trust company, qualified to act as fiduciary in this state, which is not a member of the federal reserve system shall, in operation of the common trust fund, comply with the rules adopted by the department, and the department may adopt rules it considers necessary and proper in the premises."; and made minor changes in phraseology.

Montana Changes: Montana allows a fiduciary bank or trust company to administer common trust funds composed of property permitted by law for the investment of trust funds and expands the types of entities to which investments may be furnished to include those in subsections (1)(c) through (1)(e).

Source: Section 1, Uniform Common Trust Fund Act.

32-1-704. Accounting for trust funds.

Commissioners' Note

In approximately twenty states there are common trust fund provisions containing the substance of the Uniform Act but in a different form. This amendment is recommended to the corresponding sections of those Acts, and in the states where there is no provision for court accountings, it is recommended that the whole of this section, as amended, be used.

Compiler's Comments

Source: Section 2, Uniform Common Trust Fund Act.

Montana Changes: Montana has designated the District Court as the court to conduct the accounting under this section. Montana has not adopted the 1952 amendment to this section which added a second paragraph dealing with the notice required prior to an accounting under this section.

32-1-705. Construction.

Compiler's Comments

Source: Section 3, Uniform Common Trust Fund Act.

32-1-706. Common trust funds established.

Compiler's Comments

1981 Amendment: Completely rewrote the section. For former version see sec. 1, Ch. 271, L. 1977.

Not Uniform Act: This section is not part of the Uniform Common Trust Fund Act.

Part 9

Removal of Directors or Officers of Financial Institutions

32-1-901. Definitions.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of director after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (2).

32-1-903. Informal conferences — time for application.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-904. Temporary cease and desist order — grounds for issuance — effective date — injunctive relief.

Compiler's Comments

2013 Amendment: Chapter 49 in (2) substituted "14 days" for "10 days"; and made minor changes in style. Amendment effective October 1, 2013.

32-1-905. Notice of intention to remove board member or officer or to prohibit participation — suspension.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-906. Informal conferences — time for application.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-907. Suspension or prohibition effective upon service — stay.

Compiler's Comments

2013 Amendment: Chapter 49 in (1) in second sentence and in (2) in first sentence substituted "14 days" for "10 days". Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-908. Felony charges — suspension or prohibition.

Compiler's Comments

2013 Amendment: Chapter 49 in (1) in third sentence and in (2) in first sentence substituted "14 days" for "10 days". Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-910. Hearings — decision — review, modification, termination or stay of orders.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-1-911. Notices and orders — manner of service — copies to federal authorities.

Compiler's Comments

2019 Amendment: Chapter 75 near middle of first sentence after "certified mail" inserted "or common courier with tracking capability"; and made minor changes in style. Amendment effective October 1, 2019.

32-1-912. Enforcement of notices or orders.

Compiler's Comments

2021 Amendment: Chapter 535 near middle after "for Lewis and Clark County" inserted "if the institution does not have a home office in this state". Amendment effective October 1, 2021.

Part 10

Fiduciary Foreign Trust Companies

Part Compiler's Comments

Source: Chapter 290, L. 1993, is based on Minnesota Statutes section 303.25.

32-1-1001. Definition of foreign trust company.

Compiler's Comments

2005 Amendment: Chapter 15 in (2) before "32-1-402" deleted "32-1-103 or". Amendment effective October 1, 2005.

32-1-1005. Bond.

Compiler's Comments

2015 Amendment: Chapter 12 deleted former second and third sentences that read: "In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of an amount that is certified sufficient by the foreign trust company's primary regulator for the foreign trust company's proposed business activities in this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part"; in last sentence after "file a bond" deleted "or certify the deposit of its capital"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 122 in second sentence at end substituted "of an amount that is certified sufficient by the foreign trust company's primary regulator for the foreign trust company's proposed business activities in this state" for "of a sufficient amount to meet the requirements of 32-1-307 for a trust company organized under the laws of this state"; and made minor changes in style. Amendment effective October 1, 2013.

2001 Amendment: Chapter 483 near middle of second sentence after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1997 Amendment: Chapter 42 near end of second sentence, after "32-1-307", deleted "(3)"; and made minor changes in style. Amendment effective March 12, 1997.

32-1-1007. Solicitation of business.

Compiler's Comments

2001 Amendment: Chapter 483 at end after "department" deleted "of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1993 Statement of Intent: The statement of intent attached to Ch. 290, L. 1993, provided: "A statement of intent is required for this bill because [section 7] [32-1-1007] authorizes the department of commerce [now department of administration] to adopt rules regulating the conduct of business in Montana by foreign trust companies. It is intended that the rules allow a foreign trust company to establish branches or offices of any sort in Montana or to solicit business in Montana only if reciprocating states within the ninth federal reserve district generally permit such solicitation."

Part 15

Financial Institutions — Preventing Financial Exploitation

Part Compiler's Comments

Effective Date: This part is effective October 1, 2019.

Preamble: The preamble attached to Ch. 241, L. 2019, provided: "WHEREAS, it is the intent of the Legislature to provide legal protection to covered financial institutions so that they have the discretion to take actions to assist in detecting and preventing financial exploitation; and

WHEREAS, the Legislature recognizes that covered financial institutions are in a unique position to potentially discover financial exploitation when conducting transactions on behalf of and at the request of their customers; and

WHEREAS, covered financial institutions have duties imposed by contract and duties imposed by both federal and state law to conduct transactions requested by their customers faithfully and timely in accordance with the customer's instructions; and

WHEREAS, covered financial institutions do not have a duty to contravene the valid instructions of their customers, nor to prevent criminal activity directed at their customers, and nothing in this act creates such a duty."

32-1-1501. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 12, L. 2023. Amendment effective October 1, 2023.

32-1-1502. Notices.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 12, L. 2023. Amendment effective October 1, 2023.

32-1-1503. Delaying transactions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 12, L. 2023. Amendment effective October 1, 2023.

32-1-1504. Immunity.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 12, L. 2023. Amendment effective October 1, 2023.

CHAPTER 2
MUTUAL SAVINGS AND LOAN ASSOCIATIONS

Chapter Administrative Rules

Title 2, chapter 59, subchapter 20, ARM Mutual savings and loan associations.

Chapter Case Notes

Statute Unconstitutional: This section granting the Department of Business Regulation (now Department of Administration) the power to approve or disapprove applications for merger of savings and loan associations is unconstitutional as it delegates legislative authority without providing standards or guidelines either expressed or otherwise ascertainable. This defect was not cured by the Department's supplying standards to govern the hearing on an application when there were no statutory standards or guidelines from which the Department could extrapolate new ones. In re Gate City S&L Ass'n, 182 M 361, 597 P2d 84 (1979); Gate City S&L Ass'n v. Pitts, 166 M 411, 533 P2d 1083 (1975). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Approval of Merger — Justiciable Controversy: Approval of proposed merger of savings and loan institutions by the Director of the Department of Business Regulation (now Department of Administration) prior to approval of merger by Federal Home Loan Bank Board does not render the decision of the Director a nonjusticiable controversy. Gate City S&L Ass'n v. Pitts, 166 M 411, 533 P2d 1083 (1975). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Approval of Shareholders: There is nothing in this section to indicate that the approval of the shareholders must precede the consent of the Director of the Department of Business Regulation (now Department of Administration), nor alternatively, that the Director's consent must precede the shareholders' vote. Gate City S&L Ass'n v. Pitts, 166 M 411, 533 P2d 1083 (1975). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Foreign Associations: A North Dakota chartered savings and loan association would be treated the same as a domestic association for merger purposes. Gate City S&L Ass'n v. Pitts, 166 M 411, 533 P2d 1083 (1975). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Intent — Time of Ratification of Consolidation: Under law, foreign and domestic savings and loan associations are to be treated alike. Approval of the consolidation of building and loan associations by their shareholders may be prior or subsequent to approval by the Director of the Department of Business Regulation (now Department of Administration). Gate City S&L Ass'n v. Pitts, 166 M 411, 533 P2d 1083 (1975). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.) (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Joinder of Merging Associations: Montana savings and loan associations should have joined in the application of North Dakota savings and loan association for merger of the three associations. Gate City S&L Ass'n v. Pitts, 166 M 411, 533 P2d 1083 (1975). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Merger With Out-of-State Association: A North Dakota chartered savings and loan association may merge with two Montana chartered savings and loan associations and maintain their separate existing facilities. (See subsection (2) as amended in 1977.) Gate City S&L Ass'n v. Pitts, 166 M 411, 533 P2d 1083 (1975). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

No Conflict Between Sections: Section 15-31-102, prior to its amendment by Ch. 155, L. 1961, respecting corporations exempt from the provisions of the corporation license tax included domestic building and loan associations. This provision was deleted by amendment. Section 7-122, R.C.M. 1947 (now repealed), contained a provision reading: "Associations organized under or controlled by this act shall be subject to taxation in no other way." Section 7-159, R.C.M. 1947 (now 32-2-420(2), MCA), read: "Insofar as the provisions of this act are inconsistent with the provisions of any other law governing building and loan associations, the provisions of this act shall control." Plaintiff contended this language precluded the imposition of any other type of tax than that prescribed in section 7-122, R.C.M. 1947 (now repealed). The court held that section 7-122, R.C.M. 1947 (now repealed), was a statute for classification of property of building and loan associations for property tax purposes only and was limited to that sphere. The court held that there was no conflict between the R.C.M. 1947 sections 7-122, 7-159 (now 32-2-420(2), MCA), and 84-1501 (now 15-31-102, MCA). (Annotator's comment: Section 7-159, R.C.M. 1947 (now 32-2-420(2), MCA), was enacted as sec. 2, Ch. 35, L. 1945. The only other section contained in Ch. 35, L. 1945, was section 1 of that chapter which is now 32-2-420(1), MCA (formerly section 7-158, R.C.M. 1947). It appears that sec. 2, Ch. 35, L. 1945, when referring to "this act" meant the Servicemen's Readjustment Act of 1944 and not the entire building and loan association law as implied in this case note. Pursuant to 1-11-204, the Code Commissioner changed the word "act" to "section" during recodification to accurately reflect the applicability of sec. 2, Ch. 35, L. 1945.) Home Bldg. & Loan Ass'n of Helena v. Fulton, 141 M 113, 375 P2d 312 (1962). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Dues Not Debt Payments: The payments of dues on building and loan stock are not payments upon the debt due from the stockholder upon a mortgage note. The payments upon the stock are not to be regarded as partial payments operating to reduce the debt so as to periodically reduce the interest agreed to be paid. Security Bldg. & Loan Ass'n v. Shallow, 96 M 498, 31 P2d 732 (1934). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Unequal Taxation Not Discrimination: A building and loan association is "a corporation, mutually operated, for the purpose of encouraging home building and thrift among its shareholders, and loaning substantially all of its funds to them on real estate mortgage security". The state may, if it sees fit, favor such associations in levying taxes, as a matter of public policy, without such action being regarded as unfriendly discrimination against national banks. A building and loan association does not make loans with a view to a sale of the notes and reinvestments, as in the investment features of banking, and hence its capital is not competing moneyed capital within the meaning of 12 U.S.C.A. § 548. Merchants' Nat'l Bank v. Dawson County, 93 M 310, 19 P2d 892 (1933).

Loan Cancellation — Membership to Be Shown: Plaintiff brought suit to foreclose on a note in the manner provided in the contract. Defendant sought to avoid payment by offering evidence tending to show the note was canceled in accordance with section 4193, R.C.M. 1907 (now repealed), which prescribed the method of payment by which members of building and loan associations could have their loans canceled. Defendant failed to plead his membership in the association. In the absence of establishing his membership, defendant's offered evidence was properly excluded. W. Loan & Sav. Co. v. Smith, 42 M 442, 113 P 475 (1911). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Borrower Who Is Stockholder: A borrower of a building and loan association was also a stockholder. The charter of the association expired before its stock matured. The borrower was to be credited with the accrued value of his stock and the unearned portion of his bonus, computed to the time the charter expired, less his share of the expenses of administering the winding up of the association. Ferrell v. Evans, 25 M 444, 65 P 714 (1901). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Chapter Attorney General's Opinions

Authority of Agent: A domestic building and loan association does not have the power to authorize an agent to accept payment on loans made by the association or to repurchase share accounts of the association. 29 A.G. Op. 2 (1961). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Branching Prohibited: Citing 32-1-372, the Attorney General held that a domestic building and loan association is not authorized under our statutes to establish a branch office. (This section as amended in 1977 now expressly prohibits branching between a building and loan association chartered in Montana by the state and one chartered by any other state. In 1981, the Legislature granted all the rights of federally chartered savings and loan associations to state chartered building and loans. This presumably includes the right to branch.) 29 A.G. Op. 2 (1961). (Annotator's note: The Bank Act was repealed and replaced with the Mutual Savings and Loan Association Act by Ch. 431, L. 2021.)

Part 6
General Provisions

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

Part 7
Department Responsibility

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

Part Administrative Rules

Title 2, chapter 59, subchapter 20, ARM Mutual savings and loan associations.

Part 8
Formation and Reorganization

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

Part Administrative Rules

Title 2, chapter 59, subchapter 20, ARM Mutual savings and loan associations.

32-2-827. Merger of mutual associations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 24, L. 2023. Amendment effective February 28, 2023.

Applicability: Section 3, Ch. 24, L. 2023, provided: "[This act] applies to mutual association merger proceedings initiated after [the effective date of this act]." Effective February 28, 2023.

Part 9
Operation and Regulation

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

Part Administrative Rules

Title 2, chapter 59, subchapter 20, ARM Mutual savings and loan associations.

Part 10
Dissolution, Closing, and Liquidation

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

Part Administrative Rules

Title 2, chapter 59, subchapter 20, ARM Mutual savings and loan associations.

Part 11
Federal Deposit Insurance Corporation

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

Part 12
Removal of Directors or Officers

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

CHAPTER 3
CREDIT UNIONS

Chapter Compiler's Comments

Section Not Codified: Section 14-677, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 77, Ch. 38, L. 1975.

Chapter Administrative Rules

Title 2, chapter 59, subchapter 4, ARM Credit unions.

Part 1
General Provisions

32-3-102. Purposes — definitions.

Compiler's Comments

2015 Amendment: Chapter 317 in (1) at beginning substituted "The purposes of a credit union are to" for "A credit union is a cooperative, nonprofit association, incorporated under this chapter for the purposes of"; inserted (2) providing definitions; and made minor changes in style. Amendment effective October 1, 2015.

32-3-103. Use of name exclusive.

Compiler's Comments

2003 Amendment: Chapter 237 inserted (1) concerning the adoption of credit union names; in (2) near beginning after "act or an" substituted "organization or corporation whose membership or ownership is primarily limited to" for "association of", after "unions or" substituted "credit union organizations may not use" for "a recognized chapter thereof, any person, corporation, partnership, or association using", and near end after "derivation" substituted "of the words "credit union", and the person may not represent that the person is a credit union and may not conduct business as" for "thereof or representing themselves in their advertising or otherwise as conducting business as"; in (3) at end substituted "further violation of the provisions of this section" for "using such words in its name"; and made minor changes in style. Amendment effective October 1, 2003.

32-3-104. Office facilities.

Compiler's Comments

2001 Amendment: Chapter 483 at end of (1) after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendments: Chapter 140 inserted (3) allowing a credit union to maintain additional offices upon notice to Department; inserted (4) providing departmental approval of additional office absent compelling reason for disapproval; and inserted (5) providing for hearing if Department disapproves additional office.

Chapter 274 substituted "department of commerce" for "department of business regulation" in (1).

32-3-106. Establishment of a student financial institution.

Compiler's Comments

2019 Amendment: Chapter 75 substituted current text for former text that read: "With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state, and the boards of trustees of a high school district, as defined in 20-6-101, or a K-12 district, as defined in 20-6-701, may establish a school financial institution, as defined in 32-1-115." Amendment effective October 1, 2019.

2003 Amendment: Chapter 340 at end after "state" inserted authorization of establishment of student financial institutions. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 7, Ch. 340, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to a school financial institution opened on or after July 1, 2003."

Part 2
Regulation

32-3-201. Department of administration.

Compiler's Comments

2003 Amendment: Chapter 237 throughout section substituted reference to department for reference to director; and inserted (4) allowing the department to enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a credit union is organized and the state or states in which the credit union's branches may be located. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (1) near beginning after "director" inserted "of the department of administration"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (2) inserted second sentence relating to state special revenue fund.

Administrative Rules

Title 2, chapter 59, subchapter 4, ARM Credit unions.

32-3-202. Reports.

Compiler's Comments

2003 Amendment: Chapter 237 in (1) near beginning after "report to the" substituted "department of administration" for "director"; at end of (2) substituted "department" for "director"; and made minor changes in style. Amendment effective October 1, 2003.

32-3-203. Examinations.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 64 in (1) in first sentence substituted "examine or cause to be examined each credit union on a schedule determined by the department" for "annually examine or caused to be examined each credit union"; and in (3) in first sentence before "examination" deleted "annual". Amendment effective October 1, 2003.

Chapter 237 in (1) in middle of first sentence after "shall" deleted "annually" and at end inserted "on a schedule determined by the department" and near middle of second sentence after "representatives of the" deleted "director of the"; in (3) near beginning of first sentence after "making an" deleted "annual" and in two places substituted "department" for "director"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (1) near beginning after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

Administrative Rules

ARM 2.59.401 Supervisory and examination fees.

32-3-204. Records.

Compiler's Comments

2003 Amendment: Chapter 237 in (1) in first sentence after "rules that" deleted "the director of" and in second sentence after "rules, the" substituted "department" for "director"; in (2) at end substituted "department" for "director"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 25 in (1) in first sentence after "director" inserted "of the department of commerce"; in (3) near beginning after "photographic" inserted "copy or" and after "any" inserted "kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form"; and made minor changes in style. Amendment effective February 22, 2001.

Code Commissioner Instruction: Pursuant to sec. 221(1), Ch. 483, L. 2001, in (1) the code commissioner changed "department of commerce" to "department of administration".

Administrative Rules

ARM 2.59.405 Retention of credit union records.

32-3-205. Cease and desist orders — suspension — involuntary liquidation.

Compiler's Comments

2003 Amendment: Chapter 237 inserted (1) allowing issuance of cease and desist orders under certain circumstances; inserted (2) allowing suspension of directors, officers, or committee members under certain circumstances; in (3)(a) near middle of first sentence after "unsound manner" substituted "the department may" for "the director of the department of administration shall"; in (3)(b) at end of first sentence substituted "department, or the department may appoint a conservator to operate the credit union during the period of suspension" for "director" and at beginning of second sentence after "The" substituted "board of directors shall file with the department" for "credit union shall then file with the director" and after "notice and" deleted "may request a hearing to"; in (3)(c) after "corrected" inserted "or upon acceptance of a plan of proposed corrective actions" and substituted "department" for "director"; in (3)(d) at beginning substituted "department" for "director", after "suspension" deleted "and providing an opportunity for a hearing", and at end after "operations" substituted "the board may request an administrative hearing" for "the director may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of the action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section"; in (4) at end of introductory clause substituted "or if after a hearing, the department continues to reject the credit union's plan to continue operations, the department may" for "the director may then"; inserted (4)(a) allowing a credit union to operate under a conservator until conditions requiring suspension are remedied; inserted (4)(b) allowing involuntary credit union merger; inserted (5) providing that a credit union may not be involuntarily merged or liquidated prior to the suspension procedures outlined in this section; inserted (6) concerning distribution of credit union assets in the event of a credit union liquidation; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (1) near middle of first sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

32-3-206. Authorized activities of credit unions.

Compiler's Comments

2003 Amendment: Chapter 237 throughout section in four places substituted reference to department of administration for reference to director; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: At beginning, substituted "Upon written application to the director, a credit union may engage" for "The director may authorize any credit union to engage"; and substituted third sentence that states conditions under which the Director must approve an activity and fourth sentence that entitles a credit union to a hearing if the Director disapproves an activity for former third sentence that read "Upon receipt of a written request from any state chartered credit union, the director shall exercise such power by the issuance of a special order therefor if he deems it reasonably required to preserve and protect the welfare of such an institution and promote the general economy of this state".

Attorney General's Opinions

Credit Unions — Checking Accounts: State-chartered credit unions are prohibited from offering "share draft" programs. However, the Director of the Department of Business Regulation (now Department of Commerce) may authorize them to do so upon written request. 37 A.G. Op. 86 (1977). (Issued prior to 1985 amendment that removed the restriction against providing checking account services.)

32-3-207. Confidentiality — penalties.

Compiler's Comments

2019 Amendment: Chapter 68 in (1)(a) in second sentence at beginning substituted "Except as provided in subsection (1)(b), confidential information" for "The information"; in (1)(b) in first sentence after "federal credit union regulatory agencies" inserted "with a federal reserve bank" and inserted second sentence relating to the department furnishing examination reports; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2003.

32-3-211. Conservatorship.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

32-3-212. Involuntary merger.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

32-3-215. Out-of-state credit unions.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

32-3-216. Conducting business outside this state.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Part 3

Organization, Membership, and Dissolution

32-3-301. Organization procedure.

Compiler's Comments

2015 Amendment: Chapter 317 in (2) after "execute" deleted "in duplicate"; in (2)(c) substituted "$50" for "$25"; in (3) at end substituted "forward the bylaws as provided in subsection (5)" for "execute the bylaws in duplicate"; in (4) after "supervisory committee" deleted "if the bylaws provide for a supervisory committee"; in (5)(a) in second sentence before "operation" deleted "field of", in third sentence substituted "an approved copy" for "a copy" and inserted "or provide a written reason if the application is denied", and deleted former last sentence that read: "The application must be acted upon within 30 days"; in (7) at end inserted "Title 2, chapter 4"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 237 in (2)(a) near middle after "which" substituted "must conform with the provisions of 32-3-103" for "may not be the same as that of any other existing credit union in this state"; in (4) near end of third sentence after "submitted to the" deleted "director of the"; in (5) in four places substituted reference to department for reference to director; inserted (7) allowing subscribers to request a hearing if a certificate of approval is denied; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendments — Composite Section: Chapter 25 in (4) at end of first sentence inserted "if the bylaws provide for a supervisory committee"; and made minor changes in style. Amendment effective February 22, 2001.

Chapter 483 in (4) at end of third sentence and in (5) at end of first sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (4) and (5).

32-3-302. Form of articles and bylaws.

Compiler's Comments

2003 Amendment: Chapter 237 near middle of first sentence before "department of administration" deleted "director of the"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in first sentence near beginning after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

32-3-303. Amendments.

Compiler's Comments

2003 Amendment: Chapter 237 in (1) near middle after "submitted" inserted "by certified mail, return receipt requested" and after "to the" deleted "director of the"; in (2)(a) after "writing by the" substituted "department" for "director"; inserted (3) providing that amendments be considered approved if the department does not approve or disapprove the amendments within the 60-day period unless the approval period is extended for good cause; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (1) near middle of second sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

32-3-304. Membership defined.

Compiler's Comments

1981 Amendment: Inserted "or groups within a well-defined neighborhood, community, or rural district" in the middle of (2); deleted "provided that mere residence in a community may not establish a common bond of association or interest" at the end of (2).

Case Notes

Effect of Membership on Contracts: The fact that a credit union could deal only within the class of people holding membership and that part of the consideration for a loan was mutual trust and confidence did not give it a different and favored position under contract law from individuals or concerns dealing with the public generally. Anaconda Fed. Credit Union v. West, 157 M 175, 483 P2d 909 (1971).

32-3-305. Societies — associations.

Compiler's Comments

1985 Amendment: In (1) at end, after "individuals", deleted "but may not borrow in excess of their shareholdings"; and inserted (2) setting loan limits.

32-3-307. Limited-income persons.

Compiler's Comments

2003 Amendment: Chapter 237 near middle after "defined by the" deleted "director of the". Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 near end after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Administrative Rules

ARM 2.59.402 Credit unions — limited income persons — definition.

32-3-310. Meetings of members.

Compiler's Comments

2003 Amendment: Chapter 237 in (2) in second sentence after "absentee ballot" inserted "or mail ballot"; and made minor changes in style. Amendment effective October 1, 2003.

32-3-321. Liquidation.

Compiler's Comments

2015 Amendment: Chapter 317 in (3) in two places and in (5) substituted "14 days" for "10 days"; in (4) in first sentence before "liquidation plan" inserted "proposed", after "of any kind" substituted "loans" for "new loans", and after "transactions" deleted "pending action by members on the proposal to liquidate"; in (5) in second sentence after "each member" deleted "by first-class mail"; in (7) in second sentence inserted "The liquidating credit union"; in (9) in second sentence before "records" deleted "books and"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 237 in (1) at end after "section" deleted "and the applicable Montana corporation laws"; in (3) near middle of first sentence substituted "presiding officer of the board" for "president", after "notify the" deleted "director of the", and at end inserted "and a plan for liquidation" and near middle of second sentence substituted "presiding officer of the board" for "president" and after "notify the" substituted "department" for "director"; in (4) at beginning of first sentence substituted "Depending on the credit union's circumstances, a liquidation plan may or may not require the suspension of" for "As soon as the board of directors decides to submit the question of liquidation to the members" and near middle after "any kind" substituted "new loans, or other similar financial transactions" for "and granting loans must be suspended" and near middle of third sentence after "authorization of the" deleted "board of directors" and after "agent" inserted "or committee"; inserted (6) concerning appointment of a liquidating agent or committee if liquidation is approved; deleted former (7) that read: "(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this chapter. Remaining assets must be distributed to the members proportionately to the shares held by each member as of the date dissolution was approved"; inserted (8) concerning distribution of assets; in (9) near beginning of first sentence after "As soon as the" deleted "board of directors or the", after "agent" inserted "or committee", and near middle substituted "liquidating agent or committee" for "board or the agent", at end of second sentence after "department" inserted "and the secretary of state", and at beginning of third sentence after "filing" inserted "with both entities"; inserted (10) concerning issuance of a cease and desist order under certain circumstances; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (3) near middle of first sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (3).

32-3-322. Merger.

Compiler's Comments

2015 Amendment: Chapter 317 in (1) near end after "majority of the" inserted "voting" and after "merging credit union" deleted "present at a meeting of its members called for that purpose"; in (3) after "certified plan" inserted "and the articles of merger"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 237 in (1) near beginning after "approval of the" deleted "director of the" and after "administration" deleted "and compliance with the applicable Montana corporation law"; in (2) near beginning of introductory clause after "agreement by" substituted "each board of" for "the"; in (2)(a) after "meeting of" substituted "each" for "the"; in (3) near middle of first sentence after "forwarded to the" substituted "department" for "director" and after "certified by the" substituted "department" for "director" and inserted second sentence requiring filing of a copy of the certificate of merger and certified plan with the secretary of state; and in (4) near beginning of first sentence after "from the" substituted "department" for "director". Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (1) near beginning after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

32-3-323. Conversion of charter.

Compiler's Comments

2003 Amendment: Chapter 237 in (1) near end after "issued by the" deleted "director of the"; and in (2) near end of second sentence after "requirements of the" substituted reference to department for reference to director of the department of administration and at end substituted "department" for "director". Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 at end of (1) and in (2) near end of second sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in two places.

Part 4
Operation and Officers

32-3-401. General powers.

Compiler's Comments

2015 Amendment: Chapter 317 in (7) substituted "provided in this chapter" for "hereinafter provided"; in (12) inserted "cooperative banks" and substituted "corporate credit unions" for "central type credit union organizations"; in (17) substituted "if approved" for "when approved" and before "not inconsistent" inserted "if"; inserted (22) regarding medical care savings accounts and health savings accounts; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 237 in (9) at end substituted "department of administration" for "director"; in (10) at end substituted "department" for "director"; in (18) at end substituted "department" for "director"; in (19) at end substituted "department" for "director"; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: In (16) at end, after "services", deleted "but not including checking account services"; inserted (21) allowing a credit union to act as custodian or trustee of certain pension or profit-sharing funds; and inserted (22) allowing a credit union to act as agent and depository for governmental entities.

Case Notes

Authority of Credit Union — Loan for Real Estate Purchase: The acts of a credit union in providing purchasers a $4,000 loan for the down payment on the purchase of real estate and taking a mortgage on the premises were legal acts within the authority of the credit union. Taylor v. Anaconda Fed. Credit Union, 170 M 51, 550 P2d 151 (1976).

Attorney General's Opinions

Credit Unions — Checking Accounts: State-chartered credit unions are prohibited from offering "share draft" programs. However, the Director of the Department of Business Regulation (now Department of Administration) may authorize them to do so upon written request. 37 A.G. Op. 86 (1977). (Issued prior to 1985 amendment that removed the restriction against providing checking account services.)

32-3-403. Election or appointment of officials.

Compiler's Comments

2015 Amendment: Chapter 317 in (2) in second sentence inserted "Subsequent appointments must be", deleted former third sentence that read: "However, the bylaws of the credit union may provide that the supervisory committee members are elected for terms that the bylaws provide by the members of the credit union at the annual meeting of the members or may provide that the credit union may not have a supervisory committee", and substituted current third and fourth sentences for "If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417 and 32-3-418(1), are the responsibility of the board of directors"; inserted (3) and (4) regarding bylaws requirements and membership of credit committee; deleted former (3) that read: "(3) As provided in the bylaws, the board of directors shall appoint or the members shall elect a credit committee, consisting of an odd number of at least three members, for terms that the bylaws provide. In lieu of a credit committee, the bylaws may provide that the board of directors shall appoint a credit manager"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 237 in (3) at beginning of first sentence inserted "As provided in the bylaws" and after "appoint" inserted "or the members shall elect" and near middle of second sentence after "committee" inserted "the bylaws may provide that the board of directors"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 25 in (2) near end inserted "and 32-3-418(1)"; and made minor changes in style. Amendment effective February 22, 2001.

1985 Amendment: In (2) inserted second and third sentences allowing for election of supervisory committee members and providing that Board shall perform supervisory duties if the bylaws provide that a credit union may not have a supervisory committee.

Administrative Rules

ARM 2.59.415 Duties of the supervisory committee.

32-3-404. Record of board and committee members.

Compiler's Comments

2003 Amendment: Chapter 237 at beginning after "Within" substituted "30 days" for "15 days". Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 near end after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

32-3-405. Vacancies.

Compiler's Comments

2015 Amendment: Chapter 317 in (1) in middle inserted "within 60 days. An individual appointed to fill a vacancy shall serve" and at end inserted "or as provided in the bylaws"; in (2) inserted "within 60 days or as provided in the bylaws"; and made minor changes in style. Amendment effective October 1, 2015.

32-3-406. Compensation of officials.

Compiler's Comments

2015 Amendment: Chapter 317 in (1) substituted current text for "An officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer, may not be compensated for service in that position, but"; inserted (2) and (2)(a) regarding allowable payments; in (2)(b) at end substituted "an official" for "a director or committee member may not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-3-407. Conflicts of interest.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-3-408. Executive officers.

Compiler's Comments

2003 Amendment: Chapter 237 in (1) in introductory clause at beginning after "their" substituted "next meeting" for "organization meeting and within 15 days"; in (1)(a) at beginning substituted "presiding officer" for "an executive officer, who may be designated as chairman" and after "board" deleted "or president"; in (1)(b) at beginning substituted "one or more vice presiding officers" for "a vice-chairman" and at end after "board" deleted "or one or more vice-presidents"; and made minor changes in style. Amendment effective October 1, 2003.

32-3-411. Meetings of board of directors and committees.

Compiler's Comments

2003 Amendment: Chapter 237 in (1) at beginning of first sentence inserted "Either", after "directors" substituted "or" for "and", and at end after "meet" substituted "each month" for "as often" and at beginning of second sentence inserted "The board of directors or the executive committee may meet at other times" and at end after "necessary" deleted "but one body must meet at least monthly and the other at least quarterly"; inserted (2) concerning participation in meetings through the use of communications equipment; inserted (3) concerning the use of written consent without a meeting; and made minor changes in style. Amendment effective October 1, 2003.

32-3-416. Credit committee or credit manager duties.

Compiler's Comments

2015 Amendment: Chapter 317 in (1) substituted current text for "The credit committee may be dispensed with and a credit manager may be empowered to approve or disapprove loans under conditions prescribed by the board of directors. If the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply and loans may not be made unless approved by the credit manager, except"; in (2) at beginning inserted "The credit committee or", substituted "board of directors" for "credit manager", and inserted last sentence regarding appeal process; inserted (3) and (4) regarding credit union's use of credit committee and use of policies to determine loan size or type that may be approved; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-3-417. Audits.

Compiler's Comments

2015 Amendment: Chapter 317 in (2) substituted "verify the records of the credit union consistent with 12 CFR 715.8 and 12 CFR 741.202" for "cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years". Amendment effective October 1, 2015.

2003 Amendment: Chapter 237 in (1) near middle of second sentence after "required by the" substituted "department of administration" for "director"; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: In (1) and (2) near beginning, after "The", inserted "board of directors or".

32-3-418. Suspension and removal of officials.

Compiler's Comments

2015 Amendment: Chapter 317 deleted former (1) that read: "(1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report the action to the board of directors for appropriate action"; in (1) substituted "suspend any official until the next membership meeting" for "suspend any officer or member of the board of directors until the next members' meeting"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-3-422. Duties of directors — rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Source: This section is similar to former section 32-3-412.

Part 5
Shares and Accounts

32-3-501. Shares.

Compiler's Comments

1993 Amendment: Chapter 494 inserted (4) concerning payable on designation accounts described in Title 72, chapter 6, part 2; and made minor changes in style.

Saving Clause: Section 136, Ch. 494, L. 1993, was a saving clause.

32-3-502. Dividends.

Compiler's Comments

2001 Amendment: Chapter 25 deleted former second sentence that read: "The dividends must be paid on all shares outstanding at the close of the period for which the dividend is declared" and inserted "The dividends must be paid on all shares according to any method of calculation allowed by law." Amendment effective February 22, 2001.

1997 Amendment: Chapter 365 in last sentence, before "shares", deleted "paid-up"; deleted (2) and (3) that read: "(2) Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportionate share of such dividend.

(3) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first 15 days of that month"; and made minor changes in style.

32-3-505. Joint accounts.

Compiler's Comments

2003 Amendment: Chapter 237 in (1) at end of first sentence inserted "as a tenant in common, or under any other form of multiple party account ownership permitted by law and allowed by the credit union" and inserted third sentence providing that a joint account must contain a membership share for each joint owner seeking membership; in (2) near middle after "the joint" substituted "owners" for "tenants"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Addition of Name to Signature Card Not Proof of Intent to Make Gift: The plaintiff added her nephew's name to a joint tenancy signature card for her bank checking account to facilitate the administration of her estate upon her death. All money in the account was deposited by the plaintiff, who exercised exclusive control over the account. The plaintiff transferred money from the account to her nephew and his wife, who used the sums to purchase real estate. After her nephew died, the plaintiff sought to secure title to the real property when her nephew's wife refused to repay the money the plaintiff had given the couple and which she considered a loan to them. The defendant, who is plaintiff's nephew's widow, contended the money was a gift to the couple. However, the plaintiff testified at length that the money was intended as a loan to her nephew. The addition of her nephew's name to the signature card of her checking account was not sufficient evidence to overcome the plaintiff's testimony that there was no donative intent. When a depositor during her lifetime raises the issue of ownership of funds in a joint tenancy account, the statements on the signature card are not conclusive and additional evidence may be examined to ascertain the true intent of the parties. To constitute a gift, the addition of a party's signature to a bank account signature card must satisfy all the requirements of a gift inter vivos: delivery, donative intent, and acceptance by the donee. The signature cards of joint tenancy accounts are forms containing language drafted by the depository institution and may not accurately express the intentions and relationships between the joint tenants. Peterson v. Kabrich, 213 M 401, 691 P2d 1360, 41 St. Rep. 2196 (1984).

32-3-506. Shares in trust.

Compiler's Comments

2013 Amendment: Chapter 264 in (1) in two places substituted "settlor" for "trustor". Amendment effective October 1, 2013.

Severability: Section 161, Ch. 264, L. 2013, was a severability clause.

2003 Amendment: Chapter 237 in (1) at end of first sentence after "name of a" substituted "revocable trust if the trustor is a member, or shares may be issued in the name of an irrevocable trust if either the trustor or the beneficiary is a member" for "member in trust for a beneficiary, including a minor"; in (2) in two places substituted reference to trustee for reference to member; deleted former (3) that read: "(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary"; and made minor changes in style. Amendment effective October 1, 2003.

32-3-507. Liens.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-3-508. Dormant accounts.

Compiler's Comments

2003 Amendment: Chapter 237 deleted former (1) that read: "(1) If a credit union is unable to contact a member, beneficiary, or other person via first-class mail at the last address shown on the records of the credit union and if such inability continues for a period of more than 5 years, all shares, accounts, dividends, interest, and other sums due or standing in the name of such member, beneficiary, or other person may, by action of the board of directors, be segregated and thereafter no dividends or interest will accrue thereto"; at beginning substituted "When administering member accounts that are dormant, unclaimed, or abandoned, a credit union shall comply" for "The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance", after "Uniform" deleted "Disposition of", and after "Act" inserted "provided for in Title 70, chapter 9, part 8"; deleted former (3) that read: "(3) This section does not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1)"; and made minor changes in style. Amendment effective October 1, 2003.

Part 6
Loans and Insurance

32-3-602. Loan application.

Compiler's Comments

2003 Amendment: Chapter 237 at end of first sentence substituted "upon a form prescribed by the credit union" for "in a form that the credit committee, credit manager, or loan officer prescribes". Amendment effective October 1, 2003.

2001 Amendment: Chapter 25 in first sentence after "made in" deleted "writing upon", in second sentence after "state" deleted "the purpose for which the loan is desired and", and in third sentence after "document" inserted "or electronic data capable of being converted into written form"; and made minor changes in style. Amendment effective February 22, 2001.

32-3-604. Security — real property loans.

Compiler's Comments

2009 Amendment: Chapter 324 inserted (2) limiting amount of insurance on improvements to real property that can be required by credit union on real estate loan; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 237 near middle of first sentence after "guarantor or" substituted "pledge of shares" for "assignment of shares of wages" and in second sentence after "security" substituted "is subject to the lending policies established by the board of directors" for "shall be determined by the credit committee, credit manager, or loan officer, subject to this chapter and the bylaws"; and made minor changes in style. Amendment effective October 1, 2003.

32-3-605. Installments.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

32-3-608. Loans to officials.

Compiler's Comments

2015 Amendment: Chapter 317 in (1)(a) at beginning inserted exception clause and substituted "officials" for "directors, employees, loan officers, and credit manager and to members of its supervisory and credit committees"; in (1)(a)(i) after "other borrowers" deleted "except that employees may receive low-interest or no-interest loans for job-related expenses under an employee assistance program approved by the department of administration"; in (1)(a)(ii) in two places substituted references to officials for references to directors and committee members and substituted "is" for "must be"; inserted (1)(b) regarding loans to employees other than officials; in (2) after "directors" deleted "employees"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 237 in (1)(a) at end inserted "except that employees may receive low-interest or no-interest loans for job-related expenses under an employee assistance program approved by the department of administration"; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 365 in (1)(b) and (2) increased from $2,500 to $20,000 the amount of a loan that must be reported to the board of directors; and made minor changes in style.

32-3-609. Insurance for members — debt cancellation and suspension programs.

Compiler's Comments

2011 Amendment: Chapter 138 inserted (2) concerning application and approval for debt cancellation or suspension programs that are not insurance products and the adoption of rules relating to the programs; and made minor changes in style. Amendment effective October 1, 2011.

Administrative Rules

Title 2, chapter 59, subchapter 4, ARM Credit unions.

32-3-611. Share insurance.

Compiler's Comments

2019 Amendment: Chapter 3 in (4) substituted "32-3-207" for "32-2-207". Amendment effective October 1, 2019.

2003 Amendment: Chapter 237 throughout section in four places substituted reference to department of administration for reference to director of department of administration; in (4) at beginning of first sentence inserted "Subject to the provisions of 32-3-207" and after "reports to the" deleted "administrator of the" and in second sentence after "appoint the" deleted "administrator of the"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 throughout section substituted references to department of administration for references to department of commerce; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1) after "Act" inserted remainder of sentence allowing a credit union to maintain share insurance through a legally constituted insurance plan; in (2) after "Act", inserted "or under an approved insurance plan"; and in (4), in first sentence, near middle after "administration", inserted "or any official of an insurance plan", at end after "administrators", inserted "or officials", and in second sentence, after "administration", inserted "or any official of an insurance plan".

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (2) and (4).

Federal Statute: Title II of the Federal Credit Union Act referred to in this section is codified at 12 U.S.C. § 1751, et seq.

Administrative Rules

ARM 2.59.435 Private share insurance.

Part 7
Investments and Reserves

32-3-701. Investment of funds — rulemaking.

Compiler's Comments

2015 Amendment: Chapter 317 in (1)(a) at end substituted "in securities, obligations, or other instruments issued by or fully guaranteed as to principal and interest by the United States government" for "in the same"; in (1)(g) substituted "the investments authorized under this subsection (1)(g) must be" for "such investments shall be"; inserted (2) and (3) regarding investment securities, derivative transactions, and rulemaking authority; and made minor changes in style. Amendment effective October 1, 2015.

Administrative Rules

Title 2, chapter 59, subchapter 4, ARM Credit unions.

32-3-702. Maintenance of regular reserve account.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 64 and 237 substituted current text concerning establishment and maintenance of regular reserve account and standards for that account for former text that read: "(1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:

(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then

(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then

(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.

(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.

(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve." Amendment effective October 1, 2003.

32-3-703. Use of regular reserve account.

Compiler's Comments

2003 Amendment: Chapter 237 near beginning of first sentence after "reserve" inserted "account" and after "approval of the" deleted "director of the" and near beginning of second sentence after "reserve" inserted "account", near end after "approved by the" deleted "director of the", and at end after "department" deleted "of administration". Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 near end of first sentence and at end of second sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: After "losses" substituted "including, with prior approval of the director of the department of commerce, losses from the sale of investments or securities. The regular reserve may not be used to meet losses" for "except those"; and changed "shall" to "may".

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

32-3-705. Special reserves.

Compiler's Comments

2003 Amendment: Chapter 237 in introductory clause after "reserve" inserted "account"; and in (2) after "or by the" deleted "director of the". Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (2) after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (2).

Part 8
Corporate Credit Unions

32-3-801. Organization.

Compiler's Comments

1995 Amendment: Chapter 18 at end of first sentence substituted "part" for "chapter".

1993 Amendment: Chapter 66 in two places substituted reference to corporate credit union for reference to central credit union; and made minor changes in style. Amendment effective February 22, 1993.

32-3-802. Purpose — membership.

Compiler's Comments

1993 Amendment: Chapter 66 inserted (1) stating purpose of corporate credit union; near beginning of (2) substituted "corporate credit union" for "central credit union" and substituted "must include" for "may include, but not be limited to"; in (3) inserted introductory clause; in (3)(a), at end after "unions", deleted "officials and employees of any association of credit unions; and employees of federal or state government agencies responsible for the supervision of credit unions in this state"; in (3)(b) substituted "subsections (2) and (3)(a)" for "subsections (1) and (2)"; deleted former (4) through (6) that read: "(4) employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union;

(5) persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; or

(6) members of the immediate families of all members qualified above"; inserted (4) restricting membership to seven natural persons; and made minor changes in style. Amendment effective February 22, 1993.

32-3-803. Voting representative — conflict of interest.

Compiler's Comments

1997 Amendments: Chapter 42 in (1), in third sentence, substituted "is" for "must be". Amendment effective March 12, 1997.

Chapter 365 in (1), in third sentence, substituted "is" for "must be".

1993 Amendment: Chapter 66 throughout (1) substituted reference to corporate credit union for reference to central credit union; inserted (2) regarding conflicts of interest; inserted (3) requiring rulemaking in compliance with federal regulations; and made minor changes in style. Amendment effective February 22, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 66, L. 1993, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the department of commerce [now department of administration]. A "corporate" credit union is one that serves other credit unions. Other credit unions become members of the corporate credit union. The member credit unions may borrow from the corporate credit union if necessary and may invest excess funds with it. The corporate credit union may also provide to its members other financial services, such as correspondent check collection and automated funds transfer services.

The national credit union administration has adopted extensive new regulations applicable to federally chartered corporate credit unions, and it has also effectively made the regulations applicable to state-chartered corporate credit unions by prohibiting federally insured credit unions from investing in a corporate credit union that is not in compliance with the new regulations. All credit unions in Montana are federally insured. Therefore, in adopting rules pursuant to this bill, the department shall substantially conform with Title 12, part 704, Code of Federal Regulations."

32-3-804. Additional rights and powers — department rules.

Compiler's Comments

1997 Amendment: Chapter 365 inserted (8) allowing a corporate credit union to issue paid-in capital and nonmember paid-in capital; and made minor changes in style.

1993 Amendment: Chapter 66 throughout section substituted reference to corporate credit union for reference to central credit union; in (1), at beginning, inserted exception clause and at end substituted "this part" for "this section, notwithstanding any limitations or restrictions found elsewhere in this chapter"; substituted (2) concerning loans permitted by rule and concerning correspondent services for former language that read: "A central credit union may make loans to other credit unions, purchase shares of other credit unions, and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation"; in (3) and (4) inserted reference to Department rules; inserted (5) allowing investments; inserted (6) requiring rulemaking in compliance with federal regulations; inserted (7) allowing issuance of membership capital share deposit accounts; deleted former (5)(b) and (5)(c) that read: "(b) Borrow from any source an amount not in excess of three times its total assets after deduction of the notes payable account; however, with prior written approval of the director of the department of commerce, the credit union may exceed such limitation; and

(c) make loans to any member in an aggregate amount not in excess of 20% of the central credit union's total assets"; and made minor changes in style. Amendment effective February 22, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 66, L. 1993, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the department of commerce [now department of administration]. A "corporate" credit union is one that serves other credit unions. Other credit unions become members of the corporate credit union. The member credit unions may borrow from the corporate credit union if necessary and may invest excess funds with it. The corporate credit union may also provide to its members other financial services, such as correspondent check collection and automated funds transfer services.

The national credit union administration has adopted extensive new regulations applicable to federally chartered corporate credit unions, and it has also effectively made the regulations applicable to state-chartered corporate credit unions by prohibiting federally insured credit unions from investing in a corporate credit union that is not in compliance with the new regulations. All credit unions in Montana are federally insured. Therefore, in adopting rules pursuant to this bill, the department shall substantially conform with Title 12, part 704, Code of Federal Regulations."

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (5)(b).

32-3-805. Membership capital accounts.

Compiler's Comments

1997 Amendment: Chapter 365 in (1), near middle after "capital", deleted "share deposit or MCSD" and at end inserted "that are available to cover losses that exceed reserves and undivided earnings and paid-in capital"; in (2)(a), near beginning, substituted membership capital account for membership capital share deposit or MCSD account as defined term and after "deposit" inserted "term certificate, adjusted balance"; in (2)(a)(i), before "notice", substituted "3-year" for "12-month"; in(2)(b), at beginning, substituted "Upon written notice of intent to withdraw membership capital, the balance of the account will be frozen with no annual adjustment until the conclusion of the notice period" for "An MCSD account is not repayable until notice is given by the account holder credit union that the account holder credit union intends to withdraw MCSD account funds from the corporate credit union"; inserted (2)(c) regarding reduction of the membership capital by a constant monthly amortization; inserted (2)(d) regarding availability of the full balance of a membership capital account to absorb certain losses; in (3), at beginning, substituted "A membership capital" for "An MCSD"; and in (4), after "issue", substituted "membership capital" for "MCSD" and after "disclose" substituted "the terms and conditions of the account when it is opened and at least annually thereafter" for "at least annually to their members the terms and conditions under which the accounts are issued".

Effective Date: Section 11, Ch. 66, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 22, 1993.

32-3-806. Fixed assets — department rules.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 66, L. 1993, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the department of commerce [now department of administration]. A "corporate" credit union is one that serves other credit unions. Other credit unions become members of the corporate credit union. The member credit unions may borrow from the corporate credit union if necessary and may invest excess funds with it. The corporate credit union may also provide to its members other financial services, such as correspondent check collection and automated funds transfer services.

The national credit union administration has adopted extensive new regulations applicable to federally chartered corporate credit unions, and it has also effectively made the regulations applicable to state-chartered corporate credit unions by prohibiting federally insured credit unions from investing in a corporate credit union that is not in compliance with the new regulations. All credit unions in Montana are federally insured. Therefore, in adopting rules pursuant to this bill, the department shall substantially conform with Title 12, part 704, Code of Federal Regulations."

Effective Date: Section 11, Ch. 66, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 22, 1993.

32-3-807. Corporate reserves — department rules.

Compiler's Comments

1997 Amendment: Chapter 365 in (1), after "minimum", substituted "capital to assets ratio" for "ratio of risk-based capital reserves to risk-weighted assets".

1993 Statement of Intent: The statement of intent attached to Ch. 66, L. 1993, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the department of commerce [now department of administration]. A "corporate" credit union is one that serves other credit unions. Other credit unions become members of the corporate credit union. The member credit unions may borrow from the corporate credit union if necessary and may invest excess funds with it. The corporate credit union may also provide to its members other financial services, such as correspondent check collection and automated funds transfer services.

The national credit union administration has adopted extensive new regulations applicable to federally chartered corporate credit unions, and it has also effectively made the regulations applicable to state-chartered corporate credit unions by prohibiting federally insured credit unions from investing in a corporate credit union that is not in compliance with the new regulations. All credit unions in Montana are federally insured. Therefore, in adopting rules pursuant to this bill, the department shall substantially conform with Title 12, part 704, Code of Federal Regulations."

Effective Date: Section 11, Ch. 66, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 22, 1993.

32-3-808. Annual audit.

Compiler's Comments

Effective Date: Section 11, Ch. 66, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 22, 1993.

32-3-809. Contracts and written agreements.

Compiler's Comments

Effective Date: Section 11, Ch. 66, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 22, 1993.

Part 10
Penalties

Part Compiler's Comments

Effective Date: Section 8, Ch. 480, L. 2019, provided that this part is effective July 1, 2019.

CHAPTER 4
DEVELOPMENT CORPORATION ACT

Chapter Compiler's Comments

Severability Clause: Section 19, Ch. 128, L. 1969, was a severability clause.

Part 1
General Provisions

32-4-101. Definitions.

Compiler's Comments

1983 Amendment: In (1) changed name to "Montana development corporation" from "Montana development credit corporation".

32-4-103. Credit of state and local governments not pledged.

Compiler's Comments

1989 Amendment: Inserted "county, or municipal governments or their agencies or authorities"; and made minor change in grammar.

Severability: Section 4, Ch. 497, L. 1989, was a severability clause.

Part 2
Organization

32-4-201. Incorporators — general powers — capital stock — articles of incorporation.

Compiler's Comments

2001 Amendment: Chapter 483 in (1)(c)(xiii) near beginning before "department of commerce" deleted "state planning and economic development divisions of the"; and made minor changes in style. Amendment effective July 1, 2001.

1989 Amendment: In (1)(c)(iii) substituted "state, federal, county or municipal agencies or authorities" for "state and federal agencies" and inserted "convertible debentures"; in (1)(c)(v) inserted "county"; in (1)(c)(vi) inserted "except by condemnation"; in (1)(c)(xiii) inserted "or authority" and "county"; and made minor changes in style, grammar, and phraseology.

Severability: Section 4, Ch. 497, L. 1989, was a severability clause.

1983 Amendment: In (1)(a) changed name requirement to "Development Corporation of Montana" from "Development Credit Corporation of Montana".

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (1)(c)(xii).

32-4-203. Certificate of incorporation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-4-205. Amendment of articles of incorporation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (1), after "amended by", substituted "vote of the stockholders of the corporation" for "the votes of the stockholders and the members of the corporation, voting separately by classes" and after "two-thirds of" substituted "the stockholders" for "the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled"; in (1)(b), after "32-4-303", deleted "or affects a member's voting rights as provided in 32-4-301"; and made minor changes in phraseology.

32-4-206. Board of directors.

Compiler's Comments

1989 Amendment: In (2), at end, inserted clause relating to seats on the corporate board of directors; and made minor changes in style, grammar, and phraseology.

Severability: Section 4, Ch. 497, L. 1989, was a severability clause.

1987 Amendment: In (2), (3), and (4) deleted references to "members" in conjunction with "stockholders".

32-4-208. Stock ownership and limitations.

Compiler's Comments

1987 Amendment: At beginning of (1), after "all", inserted "persons"; and at end of (4) deleted "provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed 10% of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire."

Part 3
Operation and Regulation

32-4-301. Powers of stockholders.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (1), (1)(d), and (2), after "stockholders", deleted "and the members"; near beginning of (2), after "corporation", deleted "said stockholders and said members shall vote separately thereon by classes"; at end of (2) deleted "and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled"; and at end of (3) deleted "and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than $1,000 shall have one additional vote, in person or by proxy, regardless of the number of shares owned, for each additional $1,000 which such member is authorized to have outstanding on loans to the corporation at any one time as determined under 32-4-302(3)(b)".

32-4-302. Membership — limitation and apportionment of loans by members.

Compiler's Comments

1985 Amendment: In (3)(b)(ii) reduced loan limitation from 1% to 1/4 of 1%.

1983 Amendment: In (3)(b), substituted "on the basis of the member's balance sheet at the close of its 1982 fiscal year and then redetermined periodically with the concurrence of the member" for "as of the time such member becomes a member on the basis of the most recent year-end balance sheet of such member at the close of its fiscal year immediately preceding its application for membership"; inserted (4) allowing Board to authorize different loan limit from that in (3)(b); near middle of (6) reduced interest rate from "not less than 1/2 of 1%" in excess of prevailing prime rate to "not less than 1/4 of 1%" in excess of prevailing prime rate; and at end of (6) substituted "time" for "date of issuance thereof on unsecured commercial loans".

32-4-304. Surplus.

Compiler's Comments

1983 Amendment: Near end of first sentence decreased total required amount of surplus from "100%" of outstanding capital stock to "50%" of outstanding capital stock.

32-4-306. Control — supervision — reports.

Compiler's Comments

2001 Amendment: Chapter 483 near middle of first sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

CHAPTER 5
CONSUMER LOAN BUSINESSES

Part 1
General Provisions

Part Administrative Rules

Title 2, chapter 59, subchapter 3, ARM Consumer loan licensees.

32-5-102. Definitions.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 173 at beginning substituted "For the purposes of this chapter" for "Unless the context requires otherwise in this chapter"; in definition of consumer loan deleted former (b)(ii) that read: "(ii) title loans provided for in Title 31, chapter 1, part 8"; in definition of interest substituted "this chapter" for "law or fixed by the parties" and at end deleted "and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2"; and made minor changes in style. Amendment effective December 31, 2013.

Chapter 278 in definition of consumer loan deleted former (b)(ii) (see Ch. 173 note); and made minor changes in style. Amendment effective December 31, 2013.

2011 Amendment: Chapter 317 in definition of consumer loan inserted (b)(iii) exempting residential mortgage loans; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 372 inserted definition of balloon payment; in definition of consumer loan deleted former (b)(i) that read: "(i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a"; deleted definition of consumer loan business that read: ""Consumer loan business" means the business of making consumer loans as a licensee under this chapter"; inserted definition of interest; in definition of person at end deleted "in the loaning business"; and made minor changes in style. Amendment effective October 1, 2008.

2003 Amendments — Composite Section: Chapter 178 inserted (1)(b)(iii) providing that consumer loans do not include title loans in Title 31, chapter 1, part 8; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 221 in definition of consumer loan inserted (b)(ii) providing that the term does not include deferred deposit loans; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of administration for reference to department of commerce and substituted "part 10" for "part 18". Amendment effective July 1, 2001.

1997 Amendment: Chapter 374 inserted definition of consumer loan; substituted consumer loan business for consumer type loan business as defined term and after "making" substituted "consumer loans as a licensee under this chapter" for "loans generally repayable in substantially equal installments"; and made minor changes in style.

Saving Clause: Section 8, Ch. 374, L. 1997, was a saving clause.

1983 Amendment: In (5), after "loans" deleted "of $25,000 or less, which amount is subject to change pursuant to the provisions of 32-5-104,".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of business regulation" in (4).

Chapter 424 inserted "which amount is subject to change pursuant to the provisions of 32-5-104" in the middle of (5).

32-5-103. Engaging in business of making consumer loans restricted.

Compiler's Comments

2017 Amendment: Chapter 101 in (5)(a) substituted "a bank, building and loan association, savings and loan association, trust company, or credit union" for "a regulated lender, as defined in 31-1-111, to whom the exemption in 31-1-112 applies". Amendment effective March 27, 2017.

2013 Amendments — Composite Section: Chapter 173 in (1) at end deleted "The provisions of this chapter do not apply to any exempted person"; in (2) after "other licensee" inserted "financial holding company"; in (5) substituted current language for former (5) that read: "(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee or a person who makes fewer than four consumer loans a year with the person's own funds and does not represent that the person is a licensee, who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter"; and made minor changes in style. Amendment effective December 31, 2013.

Chapter 278 in (5) deleted last sentence that read: "A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter." Amendment effective December 31, 2013.

2007 Amendment: Chapter 372 in (1) in first sentence near middle substituted "compensation" for "charges" and substituted "fees, other consideration" for "compensation, consideration"; in (2) in first sentence near middle after "corporation" inserted "other licensee"; in (4) near middle substituted "person" for "lender" and at end substituted "fees, or other charges" for "or charges"; in (5) in second sentence near middle substituted reference to person who makes fewer than four consumer loans a year with person's own funds and does not represent that person is licensee for "lender who"; and made minor changes in style. Amendment effective October 1, 2008.

2005 Amendment: Chapter 125 in (4) at beginning after "Any" substituted "loan made or collected in violation of subsection (1) by a person other than a licensee or a lender exempt under subsection (5)" for "act by a licensee in the making of a contract or in the collection of a loan made under the contract that violates the provisions of this chapter"; and made minor changes in style. Amendment effective March 24, 2005.

Retroactive Applicability — Applicability: Section 5, Ch. 125, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, L. 1985."

Section 8, Ch. 272, L. 2005, amended sec. 5, Ch. 125, L. 2005, to provide: "(1) Except as provided in subsection (2), [~~This~~ this act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, Laws of 1985.

(2) [This act] does not apply to loans that are the subject of a lawsuit filed prior to [the effective date of this act]." Chapter 125 effective March 24, 2005. Chapter 272 effective April 19, 2005.

2001 Amendment: Chapter 455 in (5) inserted last sentence concerning title lenders. Amendment effective October 1, 2001.

Applicability: Section 23, Ch. 455, L. 2001, provided: "[This act] applies to title loan agreements entered into or renewed after January 1, 2002."

1999 Amendments — Composite Section: Chapter 270 in (1) in first sentence after "loans" deleted "or advances of money on credit" and in middle after "loan" deleted "or advance". Amendment effective October 1, 1999.

Chapter 404 in (1) deleted former second sentence that read: "A person engaged in business as a licensed pawnbroker may not become a licensee under this chapter"; and in (5) inserted third sentence regarding deferred deposit lender. Amendment effective October 1, 1999.

Severability: Section 18, Ch. 404, L. 1999, was a severability clause.

1997 Amendment: Chapter 374 in (1), near beginning of first sentence after "making", inserted "consumer"; and made minor changes in style.

Saving Clause: Section 8, Ch. 374, L. 1997, was a saving clause.

1993 Amendment: Chapter 18 in (1), at beginning, inserted exception clause; substituted (4) concerning acts violating the chapter for former language that read: "Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever"; inserted (5) clarifying compliance exemptions; and made minor changes in style.

1985 Amendments: Chapter 168 in (1) at beginning of second sentence, deleted "Except as provided in subsection (2), a person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or", and after "pawnbroker" deleted "or any person who shall extend credit in connection with the sale of a commodity shall", and inserted "may".

Chapter 406 in (1) before exception at end of first sentence, deleted "which in the aggregate are greater than those provided by 31-1-107(1)".

Saving Clause: Chapter 406, L. 1985, which amended this section, included a saving clause that read: "Section 9. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

1983 Amendments: Chapter 103, near middle of (1), inserted exception referring to (2); and inserted (2) allowing licensee to sell its business and assets and stating the conditions for the sale.

Chapter 140, in (1) near beginning of first sentence, substituted "any amount" for "amounts of $25,000 or less"; and deleted former (4), which read: "The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

1981 Amendment: Added (4) (deleted by Ch. 140, L. 1983. For text see 1983 amendment note above).

Administrative Rules

ARM 2.59.319 Required procedure for closing a consumer loan business.

Case Notes

Implied Private Right of Action Under Consumer Loan Act: The Montana Consumer Loan Act (CLA) does not specifically provide for or prohibit a private right of action. Defendant contended that 32-5-401 provides that the Department of Administration is the sole entity authorized to seek a violation of the CLA in the courts. Plaintiffs argued that the remedy provisions of the CLA indicated a legislative intent consistent with allowing a private right of action because the remedy of violating a loan benefits the borrower. The Supreme Court agreed with plaintiffs that the CLA's remedial measures were not inconsistent with allowing a private right of action under the CLA. If only the Department of Administration could take action to enforce the CLA, there would be no need for 32-5-407 providing that a party could be awarded attorney fees in an action on a contract entered pursuant to the CLA, and if the Legislature had wished to prohibit a private cause of action, it could have done so. Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 M 290, 104 P3d 1080 (2004). See also Somers v. Cherry Creek Dev., Inc., & RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281, holding that a private right of action was not conferred by the Legislature relating to the Retail Installment Sales Act.

Points Charged as Flat Fee on Loans Not Considered Interest — Charging Unauthorized Fees Violative of Consumer Loan Act: A lender charged a loan fee, called points, upon the origination of real estate-secured loans. The lender contended that the points were considered interest on the loan and were thus permissible under the Montana Consumer Loan Act (CLA). The Supreme Court disagreed. Interest is generally defined as a charge made for the use, forbearance, or detention of money. A flat fee front-loaded into a loan, computed as a percentage of the loan but bearing no direct relation to actual costs of specific services performed and which did not constitute a charge for use of the lender's money over time, is not interest, but rather is a fee charged by the lender for making the loan. Such fees are not authorized by the CLA and are thus prohibited. To protect borrowers, the court declined to interpret the CLA in a way that contains a loophole whereby predatory lenders could add points onto the beginning of an interest-bearing loan and thereby escape the requirement that the points be at least partially refunded if the loan is prepaid or refinanced. (Fees addressed in 2007 amendment.) Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 M 290, 104 P3d 1080 (2004).

Part 2

Licensure Requirements

32-5-201. License and renewal application fees.

Compiler's Comments

2013 Amendment: Chapter 173 in (1)(a) substituted "must be licensed. Licenses are nontransferable and nonassignable" for "shall properly display on the premises a nontransferable and nonassignable license"; in (1)(b) after "must be" substituted current language for "on a form prescribed and furnished by the department"; in (1)(c) after "upon" substituted current language for "providing written notice to and receiving approval from the department prior to the move"; in (1)(d) substituted current language for "(d) With each application, the applicant shall submit $500 as a license application fee. The license application fee is nonrefundable. The license year is the calendar year, and the license fee for any period less than 6 months is $250"; in (2) at beginning inserted "The department's share of" and substituted "deposited" for "paid by the department"; inserted (3) regarding remittance of fees through nationwide licensing system; and made minor changes in style. Amendment effective December 31, 2013.

2007 Amendment: Chapter 372 in (1)(a) in second sentence after "licenses" inserted reference to each business location and at end deleted "as to each license"; in (1)(b) after "license" inserted "or renewal"; in (1)(c) near middle substituted "upon providing written notice to and receiving approval from" for "within a county without obtaining a new license, provided he obtains written permission from" and at end inserted "prior to the move"; in (1)(d) in first sentence substituted requirement for $500 license application for "$50 as an investigation fee and $125 as a license fee", substituted second sentence making application fee nonrefundable for "The license fee shall be returned to the applicant if the application is denied", in third sentence at end substituted "$250" for "$62.50", and deleted former fourth sentence that read: "A license remains in force until surrendered, suspended, or revoked"; deleted former (2) that read: "(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license"; in (2) near beginning substituted "licensing and examination fees collected pursuant to" for "moneys collected under the authority of"; deleted former (4) that read: "(4) The amount of $1,000 in subsection (2) is subject to change pursuant to the provisions of 32-5-104"; and made minor changes in style. Amendment effective October 1, 2007.

1985 Amendment: In (3) substituted language providing that money collected under the chapter must be paid into the state special revenue fund for former text that read: "All moneys collected under the authority of this chapter shall be paid into the state treasury by the department."

1983 Amendment: In (2)(a), after "$1,000" deleted "but not exceeding $25,000"; and in (4), substituted "amount of $1,000" for "amounts of $1,000 and $25,000".

1981 Amendment: Added (4) providing that the amount of $1,000 in subsection (2) is subject to change pursuant to 32-5-104.

Administrative Rules

ARM 2.59.304 Fees paid to public officials.

32-5-202. Issuance or denial of license or license renewal.

Compiler's Comments

2015 Amendment: Chapter 23 in (2) substituted "subject to issuance and service of notice and opportunity for an administrative hearing" for "subject to notifying the applicant and providing the applicant an opportunity for a hearing. All notices and orders must be served". Amendment effective October 1, 2015.

2013 Amendment: Chapter 173 in (1) at beginning substituted "Upon submission of a completed application and payment of all required fees, a license or renewal must be issued" for "Within 30 days after a complete application for a license or a license renewal is filed with the department together with all required fees, the department shall issue the license or license renewal"; inserted (1)(b) regarding no prior revocations; inserted (1)(c) regarding no outstanding civil judgments for fraud; inserted (1)(d) regarding contents of application; and made minor changes in style. Amendment effective December 31, 2013.

2007 Amendment: Chapter 372 in first sentence near beginning inserted "complete", in two places after "license" inserted reference to license renewal, and inserted "department determines that the", in second sentence inserted reference to license renewal application, notification, and opportunity for hearing, and inserted third sentence regarding notices and orders; deleted former (2) that read: "(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application"; and made minor changes in style. Amendment effective October 1, 2008.

32-5-203. Conduct of other business in same office.

Compiler's Comments

1997 Amendment: Chapter 374 in first sentence, near beginning after "making", inserted "consumer" and near middle, after "other business", inserted "for which a license under this chapter is not required", at beginning of second sentence inserted ""Other business" may include making loans not primarily for personal, family, or household purposes", and at beginning of third sentence inserted "If the department finds concealment or evasion"; and made minor changes in style.

Saving Clause: Section 8, Ch. 374, L. 1997, was a saving clause.

32-5-205. Surrender of license.

Compiler's Comments

2013 Amendment: Chapter 173 inserted first sentence concerning conditions of surrender; in second sentence substituted "The license" for "Any licensee may surrender any license by delivering it to the department with written notice thereon, but such"; after "civil" inserted "administrative"; and made minor changes in style. Amendment effective December 31, 2013.

32-5-207. Notice of violation — administrative hearing — penalties — liability.

Compiler's Comments

2015 Amendment: Chapter 23 in (1) substituted current text concerning issuance of notice of alleged violation for former text that read: "The department, after providing a 14-day written notice to a person, whether licensed or unlicensed, that includes a statement of alleged violations and notice that the person has the right to an administrative hearing, may issue an order that includes one or more of the penalties provided for in subsection (1)(b) if it finds that the person has:

(i) violated any provision of this chapter;

(ii) failed to comply with any department rule, written instruction, or order;

(iii) failed or refused to make required reports;

(iv) furnished false information; or

(v) operated without a license"; inserted (2) concerning requirements for providing notice of alleged violations; in (3) before "the department may" inserted introductory clause concerning violation or misrepresentation; inserted (4) concerning department remedies; deleted former (2) that read: "(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed person to the last-known address of record"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 173 in (1)(a) substituted "14-day" for "10-day", substituted "a person, whether licensed or unlicensed" for "the licensee", after "statement of" substituted "alleged violations and notice that the person" for "the grounds for the proposed suspension or revocation and informing the licensee that the licensee", after "order" substituted "that includes one or more of the penalties provided for in subsection (1)(b)" for "suspending or revoking a license", and near end substituted "person" for "licensee"; in (1)(b) after "violation" deleted "of this chapter, not to exceed $5,000 for each administrative action"; in (2) substituted "person" for "business"; in (3) in two places after "suspension" deleted "or surrender" and after "civil" inserted "administrative"; and made minor changes in style. Amendment effective December 31, 2013.

2007 Amendment: Chapter 372 substituted (1)(a) concerning statement of grounds for proposed suspension or revocation, right to administrative hearing, and authority of department to issue order suspending or revoking license if licensee has violated chapter, failed to comply with department rule, furnished false information, or operated without a license for "The department, upon 10 days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued"; inserted (1)(b) regarding civil penalty and suspension or revocation of license; inserted (2) requiring mailing of notices and other matters by certified mail; inserted (3) regarding civil and criminal liability; inserted (4) requiring deposit of penalties in general fund; and made minor changes in style. Amendment effective October 1, 2008.

Administrative Rules

ARM 2.59.320 Department costs in bringing an administrative action.

32-5-208. Reinstatement.

Compiler's Comments

2007 Amendment: Chapter 372 in first sentence near beginning after "reinstate any" deleted "suspended or" and substituted "existing at the time of reinstatement that" for "then exists which clearly"; and made minor changes in style. Amendment effective October 1, 2008.

32-5-209. Department authorized to participate in nationwide licensing system for purposes of licensing consumer loan licensees — rulemaking.

Compiler's Comments

Effective Date: Section 17, Ch. 173, L. 2013, provided: "[This act] is effective December 31, 2013."

Part 3
Operation of Business — Restrictions and Requirements

32-5-301. Fees charged to consumers.

Compiler's Comments

2015 Amendment: Chapter 311 inserted (5) concerning guaranteed asset protection waiver; and made minor changes in style. Amendment effective April 27, 2015.

2013 Amendment: Chapter 173 in (1) in first sentence substituted "the principal amount of any loan" for "any loan of money" and in second sentence after "interest" deleted "including fees and charges incurred in the making of the loan but" and substituted "subsections (3) and (4)" for "subsections (2) and (3)"; in (2) substituted current language regarding financing of third-party fees for former (2) that read: "(2) If provided for in the contract, an additional fee may be charged for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement. The fee charged may be the greater of $15 or 5% of the amount past due, not to exceed $50. The fee charged for any past-due amount may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or extension of the contract by the borrower"; in (4) substituted current language for former (4) that read: "(4) The licensee may include in the principal amount of any loan:

(a) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan;

(b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan;

(c) bona fide fees or charges related to real estate security paid to third parties;

(d) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(e) fees for preparation of a deed, settlement statement, or other documents;

(f) fees for notarizing deeds and other documents;

(g) appraisal fees;

(h) fees for credit reports; and

(i) fees paid to a trustee for release of a trust deed"; in (5)(a) at beginning substituted "No other fees or charges may" for "Other fees may not" and in third sentence at beginning inserted "In addition to other remedies and penalties provided for in this chapter"; and made minor changes in style. Amendment effective December 31, 2013.

2010 Amendment by Initiative: Initiative Measure No. 164, proposed by initiative petition and approved at the general election held November 2, 2010, in (1) in first sentence after "receive" inserted "interest" and at end deleted "interest as provided under 31-1-112", and inserted second sentence relating to the interest rate that may not be exceeded.

Findings: Section 1, Initiative Measure No. 164, provided: "The people of Montana find that some lenders are charging Montanans over 400% interest annually, that excessive interest rates can lead Montana families into a debt trap of repeat borrowing, that the United States congress has enacted laws capping interest rates on loans to military families at 36% annually, and that responsible small loans are available at interest rates of 36% annually or less."

Effective Date: Section 9, Initiative Measure No. 164, provided: "[This act] applies to all transactions governed hereby entered into on or after January 1, 2011."

2007 Amendment: Chapter 372 in (1) near beginning after "A licensee" deleted "or holder of a supplementary license under this part" and after "interest" deleted "charges"; deleted former (2) and (3) that read: "(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate"; in (2) in second sentence at end inserted "not to exceed $50", in third sentence inserted "The fee charged for any past-due", and inserted fourth sentence containing exception and prohibiting other fees for default or extension of contract; inserted (3) regarding deferral and other fees; in (4)(c) at beginning substituted "bona fide fees or charges" for "The licensee may include in the principal amount of any loan bona fide charges"; in (5)(a) in first sentence at beginning substituted "Other fees" for "Further or other charges", in second sentence near middle and in third sentence in two places substituted "fees" for "charges", and in third sentence after "or received" deleted "except as the result of an accidental and bona fide error of computation"; inserted (5)(b) regarding inapplication of section to fees for certain services; deleted former (7), (8), and (9) that read: "(7) Subsections (2) and (3) apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis. The contracting for, charging of, receiving of, or financing of loan origination fees, points, or prepaid finance charges on a loan on which other charges are made on an interest-bearing basis does not make the loan subject to being considered an add-on basis loan.

(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:

(a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;

(b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or

(c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 months after the date of the loan.

(9) A prepayment charge may not be collected if:

(a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;

(b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee; or

(c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy"; and made minor changes in style. Amendment effective October 1, 2008.

2005 Amendment: Chapter 125 in (6) at end of third sentence after "licensee" substituted "shall forfeit to the borrower a sum that is double the amount that is in excess of the charges authorized by this chapter" for "may not collect or receive any charges"; in (7) near beginning of first sentence after "(3)" deleted "and (6) of this section" and inserted second sentence providing that contracting for, charging of, receiving of, or financing of loan origination fees, points, or prepaid finance charges on a loan on which other charges are made on an interest-bearing basis does not make the loan subject to being considered an add-on basis loan; and made minor changes in style. Amendment effective March 24, 2005.

Retroactive Applicability — Applicability: Section 5, Ch. 125, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, L. 1985."

Section 8, Ch. 272, L. 2005, amended sec. 5, Ch. 125, L. 2005, to provide: "(1) Except as provided in subsection (2), [~~This~~ this act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, Laws of 1985.

(2) [This act] does not apply to loans that are the subject of a lawsuit filed prior to [the effective date of this act]." Chapter 125 effective March 24, 2005. Chapter 272 effective April 19, 2005.*2003 Amendment:* Chapter 308 in (4) substituted "the greater of 5% of the amount past due or $15" for "5% of the amount past due". Amendment effective October 1, 2003.

1999 Amendment: Chapter 270 inserted (8) outlining guidelines for prepayment charges on consumer loans; inserted (9) outlining when prepayment charge may not be collected; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 198 inserted (5)(a)(ii) authorizing a licensee to include an insurance premium in the principal amount of a loan; and made minor changes in style.

1985 Amendments: Chapter 168 deleted former (4) that read: "On loans of $90 or less a licensee may charge, in lieu of charges specified in (1) of this section, not in excess of $1 for each $5 of cash or credit advanced to the borrower up to the amount of $90. A period of at least 15 days must be allowed for the repayment of each $5 cash or credit advanced. Such charges cannot be assessed by any subterfuge or device on any loan over $90 or on any balance of $90 or less when the original loan was greater than $90"; in (6) deleted former third sentence that read: "All balances due to a licensee from any person as a borrower or as an endorser, guarantor, or surety for any borrower or otherwise or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges"; and corrected internal subsection references.

Chapter 406 in (1) substituted language allowing a licensee or holder of a supplementary license to contract for and receive interest charges as provided in 31-1-112 for "Every licensee hereunder may contract for and receive on any loan of money not exceeding $1,000 in principal amount:

(a) charges at rates not in excess of $20 per year per $100 on that part of the principal amount of the loan not exceeding $500;

(b) $16 per year per $100 on that part of the principal amount of the loan exceeding $500 but not exceeding $1,000"; deleted former (2) that read: "The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in subsection (1) for the first $1,000 of the principal amount of any loan and may contract for and receive charges at rates not in excess of $12 per year per $100 on that part of the principal amount of any loan exceeding $1,000 but not exceeding $7,500"; in (2) after "(1)" deleted "and (2)"; deleted former (4) (see Ch. 168 amendment note for text); inserted (7) providing that subsections (2), (3), and (6) apply only to loans made on add-on basis; and deleted former (9) through (13) that read: "(9) On any loan of money exceeding $7,500 in principal amount, a licensee may not make charges as provided in subsections (1) and (2) but shall make charges in accordance with the provisions of this subsection through subsection (12).

(10) On any loan of money exceeding $7,500 in principal amount, a licensee may contract and receive charges at a rate not in excess of 2% per month on the principal amount as follows:

(a) Charges shall be computed on unpaid balances of the principal amount outstanding from time to time for the actual time outstanding. Each payment shall be applied first to accumulated charges and the remainder of the payment applied to the unpaid principal balance, except that if the amount of the payment is insufficient to pay the accumulated charges, unpaid charges continue to accumulate to be paid from the proceeds of subsequent payments and are not added to the principal balance.

(b) Charges made under this subsection may not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under such new loan contract may include any unpaid charges which have accrued. The resulting loan contract is a new and separate loan transaction for all purposes. The principal balance of a prior loan on which charges have been made pursuant to subsections (1) and (2) is the balance due after refund or credit is given to the borrower pursuant to subsection (5).

(11) For purposes of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(12) The provisions of subsections (5) and (6) do not apply to loans made under subsections (9) through (11).

(13) The amounts of $90, $500, $1,000, and $7,500 in subsections (1), (2), (4), (9), and (10) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts".

Saving Clause: Chapter 406, L. 1985, which amended this section, included a saving clause that read: "Section 9. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

1983 Amendments: Chapter 135, near beginning of (5)(a), inserted "for a period of not more than 61 months"; and inserted (5)(b) providing method for computing refund or credit when loan of more than 61 months is paid in full 1 month or more before final installment date.

Chapter 140, in (10), after "$7,500" deleted "but not exceeding $25,000"; and in (13), after "$7,500" deleted "$25,000"; and made minor phraseology change.

Applicability: Section 5, Ch. 135, L. 1983, provided: "This act applies only to loan agreements and installment contracts entered into after the effective date of this act [March 18, 1983]."

1981 Amendment: In (1)(a), increased the amount from $300 to $500; in (1)(b), increased from $300 to $500 and from $500 to $1,000; deleted "(c) $12 per year per $100 on that part of the principal amount of the loan in excess of $500 but not exceeding $1,000"; in (2), increased from $10 to $12; in (7), substituted "include in the principal amount of any loan" for "collect from the borrower" in the first sentence and added (7)(b) allowing a licensee to include in the principal amount charges related to real estate security paid to third parties, including certain enumerated fees; in the last sentence of (8), substituted "and" for "or" before "received", deleted "the contract of loan shall be void and" before "the licensee", deleted "principal" after "receive any", and deleted "or recompense whatsoever" after "charges"; in (10), increased from 1½% to 2%; and added (13) providing that the amounts in subsections (1), (2), (4), (9), and (10) are subject to change pursuant to 32-5-104.

Administrative Rules

ARM 2.59.302 Schedule of charges.

Case Notes

Arbitration Clause in Payday Loan Agreement Found Unconscionable: The defendant charged the plaintiff 780% annual interest on a payday loan. The loan agreement included an arbitration clause that purportedly governed the validity of the agreement to arbitrate disputes. The plaintiff brought a class action suit against the defendant for charging an annual interest rate in excess of the 36% authorized by 32-5-301, among other claims. The defendant tried to compel arbitration, but the District Court found that the arbitration clause was unenforceable and denied the request. The Supreme Court found that generally applicable contract law governs the validity of an arbitration clause, and it applied the same analysis for unconscionability of arbitration clauses as for unconscionability of contracts generally. The court found that the arbitration clause was unenforceable because it qualified as a contract of adhesion and unreasonably favored the defendant, resulting in an unconscionable provision. Kelker v. Geneva-Roth Ventures, Inc., 2013 MT 62, 369 Mont. 254, 303 P.3d 777.

Implied Private Right of Action Under Consumer Loan Act: The Montana Consumer Loan Act (CLA) does not specifically provide for or prohibit a private right of action. Defendant contended that 32-5-401 provides that the Department of Administration is the sole entity authorized to seek a violation of the CLA in the courts. Plaintiffs argued that the remedy provisions of the CLA indicated a legislative intent consistent with allowing a private right of action because the remedy of violating a loan benefits the borrower. The Supreme Court agreed with plaintiffs that the CLA's remedial measures were not inconsistent with allowing a private right of action under the CLA. If only the Department of Administration could take action to enforce the CLA, there would be no need for 32-5-407 providing that a party could be awarded attorney fees in an action on a contract entered pursuant to the CLA, and if the Legislature had wished to prohibit a private cause of action, it could have done so. Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 M 290, 104 P3d 1080 (2004). See also Somers v. Cherry Creek Dev., Inc., & RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281, holding that a private right of action was not conferred by the Legislature relating to the Retail Installment Sales Act.

Points Charged as Flat Fee on Loans Not Considered Interest — Charging Unauthorized Fees Violative of Consumer Loan Act: A lender charged a loan fee, called points, upon the origination of real estate-secured loans. The lender contended that the points were considered interest on the loan and were thus permissible under the Montana Consumer Loan Act (CLA). The Supreme Court disagreed. Interest is generally defined as a charge made for the use, forbearance, or detention of money. A flat fee front-loaded into a loan, computed as a percentage of the loan but bearing no direct relation to actual costs of specific services performed and which did not constitute a charge for use of the lender's money over time, is not interest, but rather is a fee charged by the lender for making the loan. Such fees are not authorized by the CLA and are thus prohibited. To protect borrowers, the court declined to interpret the CLA in a way that contains a loophole whereby predatory lenders could add points onto the beginning of an interest-bearing loan and thereby escape the requirement that the points be at least partially refunded if the loan is prepaid or refinanced. (See 2005 and 2007 amendments.) Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 M 290, 104 P3d 1080 (2004).

32-5-302. Installment and balloon payments.

Compiler's Comments

2013 Amendment: Chapter 173 in (2) near end substituted "making of the loan" for "loan and interest may be charged for the number of days in excess of 30 from the date of the making of the loan and may be added to the scheduled amount of the installments." Amendment effective December 31, 2013.

2007 Amendment: Chapter 372 deleted former (1) that read: "(1) A licensee may not enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making the contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than $1,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making"; in (1) at beginning substituted exception clause and reference to loan contract requiring installment payments and provision concerning principal and interest for "Each loan contract requires payment of principal and charges in installments that are"; in (2) at beginning of first sentence deleted "With respect to a loan on which charges are made on an add-on basis" and in second sentence substituted "must" for "may" and near middle after "loan and" substituted "interest may be charged" for "the charges"; inserted (3) prohibiting licensee from entering into certain loan contracts; inserted (4) allowing loans with balloon payments; and made minor changes in style. Amendment effective October 1, 2008.

1997 Amendment: Chapter 374 in (2), at beginning of second sentence, inserted "With respect to a loan on which charges are made on an add-on basis"; and made minor changes in style.

Saving Clause: Section 8, Ch. 374, L. 1997, was a saving clause.

1993 Amendment: Chapter 198 deleted (3) that read: "(3) the amounts of $300, $1,000, and $2,500 in subsection (1) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts"; and made minor changes in style.

1991 Amendment: In (1)(c) increased time of repayment agreement from 37 to 48 calendar months.

1981 Amendment: Added "or" at the end of (1)(b); increased from $2,000 to $2,500 in (1)(c); deleted (1)(d) relating to repayment for amounts between $2,000 and $2,500; and added (3) providing that the amounts in subsection (1) are subject to change pursuant to 32-5-104.

32-5-303. Borrower to receive copy of contract or statement of contents.

Compiler's Comments

2013 Amendment: Chapter 173 inserted (2) regarding disclosure, interest, and fees under the Truth in Lending Act; and made minor changes in style. Amendment effective December 31, 2013.

2007 Amendment: Chapter 372 in introductory clause near middle added reference to the federal Truth in Lending Act and after "written statement" deleted "in the English language"; in (3) at end substituted "payments" for "installments"; in (4) and (5) substituted "interest" for "charges"; in (7) substituted "this chapter" for "32-5-301(5)"; in (9) near middle inserted "without penalty" and at end deleted "and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(3) if such loan is prepaid in full"; and made minor changes in style. Amendment effective October 1, 2008.

1985 Amendment: In (7) and (9) changed the subsection references in 32-5-301.

1981 Amendment: Inserted "the disclosures required by the Federal Consumer Credit Protection Act" in the first sentence after "to one of them"; and made minor changes in punctuation.

Federal Statute: The Federal Consumer Credit Protection Act referred to in this section may be found at 15 U.S.C. 1601, et seq.

32-5-304. Receipts — return of note.

Compiler's Comments

2013 Amendment: Chapter 173 in (1) after "plain" inserted "dated" and after "receipt" deleted "in a form approved by the department"; in (2) after "card" substituted "or maintain a record by reliable electronic means of" for "which must be kept by the licensee" and at end deleted "Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any system containing information that is equivalent to that required on a loan ledger or card"; in (3) in first sentence inserted "or otherwise memorialize satisfaction of the obligation", inserted second sentence regarding reconveyance of a deed of trust, and in third sentence inserted "or other instrument clearly identifying the note or assignment and stating that it has been paid in full"; inserted (4) regarding record maintenance; and made minor changes in style. Amendment effective December 31, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Inserted "in cash" after "payment made" in (1); deleted "of the loan" at the end of the first sentence of (2); added the last two sentences in (2) relating to data processing receipts.

Administrative Rules

ARM 2.59.305 Receipt form.

32-5-305. Confessions of judgment — incomplete instruments forbidden.

Compiler's Comments

2013 Amendment: Chapter 173 in (1) at end inserted exception clause; and made minor changes in style. Amendment effective December 31, 2013.

2007 Amendment: Chapter 372 in (1) near beginning inserted "from the borrower" and after "judgment" inserted "for the borrower"; in (2) in first sentence after "agreed" substituted "interest and fees to be charged. The note or promise may not contain" for "charges and in which" and in third sentence after "certificate of insurance" deleted "a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located"; and made minor changes in style. Amendment effective October 1, 2008.

32-5-306. Insurance — real property security — definitions.

Compiler's Comments

2007 Amendment: Chapter 372 in (3)(a) in first sentence, in (4) at end, and in (5) in first sentence substituted reference to fees for reference to charges; in (5) in third sentence after "considered to be" deleted "additional charges or"; in (6) at end deleted "and the unearned portion of the premium for the canceled insurance has been rebated to the borrower"; deleted former (7) that read: "(7) The amount of $300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts"; and made minor changes in style. Amendment effective October 1, 2008.

2005 Amendment: Chapter 97 in (2) in first sentence near end after "licensed" substituted "insurance producer" for "agent"; inserted (3)(b) limiting the amount of insurance a lender may require a borrower to obtain on improvements to real property; in (5) in second sentence near middle after "particular" substituted "insurance producer" for "agent"; inserted (8) defining borrower, improvement to real property, and lender; and made minor changes in style. Amendment effective October 1, 2005.

Saving Clause: Section 2, Ch. 97, L. 2005, was a saving clause.

1989 Amendment: At beginning of (1) inserted exception clause and at end deleted "except as hereinafter provided"; near beginning of (4), after "disability insurance", inserted "and loss of income insurance"; and made minor changes in phraseology and style.

1983 Amendment: In (4), deleted last sentence, which read: "If any loan shall include amounts advanced for insurance premiums and charges, such loan shall not in any event exceed $25,000."; and in (7), substituted "amount of $300" for "amounts of $300 and $25,000".

1981 Amendment: Added (7) providing that the amount of $300 in subsections (3) and (4) is subject to change pursuant to 32-5-104.

Administrative Rules

ARM 2.59.303 Credit life insurance.

32-5-307. Records to be kept.

Compiler's Comments

1997 Amendment: Chapter 374 near beginning of first sentence, after "keep", inserted "or make available"; and made minor changes in style.

Saving Clause: Section 8, Ch. 374, L. 1997, was a saving clause.

Administrative Rules

ARM 2.59.306 Records of licensee.

32-5-308. Annual report.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 96 in (2) in first sentence after "must" deleted "be made under oath and". Amendment effective October 1, 2013.

Chapter 173 in (1) substituted "by the date and in the manner prescribed by the department covering the licensee's consumer loan activity in this state during" for "before April 15 for" and at end deleted "with the department"; in (2) after "must" deleted "be made under oath and be in a form and" and in second sentence substituted current language for "The department shall publish annually an analysis and summary of the reports"; and made minor changes in style. Amendment effective December 31, 2013.

2007 Amendment: Chapter 372 deleted former (2) that read: "(2) The report must provide information with respect to the financial condition of the licensee and must include:

(a) the name and address of the licensee;

(b) a statement of income and expenses;

(c) an analysis of charges, size of loans made, and types of security on loans;
(d) an analysis of suits and foreclosures; and
(e) other relevant information the department may reasonably require concerning the business conducted during the preceding calendar year for each licensed place of business of the licensee in this state"; in (2) in first sentence near middle inserted "and contain the information"; and made minor changes in style. Amendment effective October 1, 2008.

2005 Amendment: Chapter 64 deleted former (2)(b) that read: "(b) balance sheets at the beginning and end of the calendar year"; deleted former (2)(d) that read: "(d) a reconciliation of surplus or net earnings with the balance sheets"; deleted former (2)(e) that read: "(e) a schedule of assets used in the consumer loan business"; and made minor changes in style. Amendment effective October 1, 2005.

Administrative Rules

ARM 2.59.303 Credit life insurance.
ARM 2.59.318 Adoption of annual report form and due date.

32-5-309. Advertising — limitations.

Administrative Rules

ARM 2.59.301 Advertising.

32-5-310. Wage assignments — limitations.

Compiler's Comments

2013 Amendment: Chapter 96 in (2) in fourth sentence after "verified by" deleted "the oath of". Amendment effective October 1, 2013.

2007 Amendment: Chapter 372 in (1) substituted first sentence regarding wage assignments for "The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment", in second sentence near beginning substituted "assignment" for "assigned compensation", after "actually paid" deleted "shall", after "chapter" inserted "may not", after "interest" deleted "or charges", and after "on the loan" substituted "and must be credited to the borrower" for "from the date of payment to the date the compensation is payable"; in (2) in first sentence near beginning after "Any assignment" deleted "or other transfer", in second sentence near beginning after "An assignment" and near end after "the assignment" deleted "or order", and in third sentence after "the assignment" deleted "or transfer"; and made minor changes in style. Amendment effective October 1, 2008.

32-5-311. Precomputed interest prohibited.

Compiler's Comments

Effective Date: Section 17, Ch. 173, L. 2013, provided: "[This act] is effective December 31, 2013."

Part 4
Enforcement

32-5-401. Department — powers and duties — adoption of rules.

Compiler's Comments

2007 Amendment: Chapter 372 in (1) deleted former third and fourth sentences that read: "A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter"; and in (2) near middle substituted "persons" for "licensees" and at end substituted "as provided in this chapter" for "through the power of suspension or revocation of licenses". Amendment effective October 1, 2008.

Administrative Rules

Title 2, chapter 59, subchapter 3, ARM Consumer loan licensees.
ARM 2.59.308 Examination fees.

Case Notes

Implied Private Right of Action Under Consumer Loan Act: The Montana Consumer Loan Act (CLA) does not specifically provide for or prohibit a private right of action. Defendant contended that this section provides that the Department of Administration is the sole entity authorized to seek a violation of the CLA in the courts. Plaintiffs argued that the remedy provisions of the

CLA indicated a legislative intent consistent with allowing a private right of action because the remedy of violating a loan benefits the borrower. The Supreme Court agreed with plaintiffs that the CLA's remedial measures were not inconsistent with allowing a private right of action under the CLA. If only the Department of Administration could take action to enforce the CLA, there would be no need for 32-5-407 providing that a party could be awarded attorney fees in an action on a contract entered pursuant to the CLA, and if the Legislature had wished to prohibit a private cause of action, it could have done so. Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 M 290, 104 P3d 1080 (2004). See also Somers v. Cherry Creek Dev., Inc., & RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281, holding that a private right of action was not conferred by the Legislature relating to the Retail Installment Sales Act.

32-5-402. Investigations by department — subpoenas — oaths — examination of witnesses and evidence.

Compiler's Comments

2021 Amendment: Chapter 535 in (4) in first sentence after "judge of the district court" substituted "in the county in which the licensed premises are located or in the district court of Lewis and Clark County if no licensed premises are maintained in the state may" for "of Lewis and Clark County or the county in which the licensed premises are located may". Amendment effective October 1, 2021.

2015 Amendment: Chapter 23 in (1) after "records" deleted "in this state". Amendment effective October 1, 2015.

2007 Amendment: Chapter 372 inserted (2), (3), (4), (5), and (6) regarding investigatory powers of department and remedies for noncompliance; and made minor changes in style. Amendment effective October 1, 2008.

1983 Amendment: Deleted former (1)(b), which read: "a person who advertises for, solicits, or holds himself out as willing to make loans in amounts of $25,000 or less; or"; and deleted former (2), which read: "The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

1981 Amendment: Renumbered (1) through (3) as (1)(a) through (1)(c); and added (2) (see 1983 amendment note for text).

32-5-403. Examinations — cost.

Compiler's Comments

2007 Amendment: Chapter 372 in (1) near beginning substituted "may examine" for "shall make an annual examination of" and at end deleted "and may make such additional examinations as the department deems necessary"; in (2) in first sentence after "books" inserted "accounts", in second sentence at beginning substituted "amount charged" for "fees", and in third sentence at end inserted "pursuant to this section"; and made minor changes in style. Amendment effective October 1, 2008.

1985 Amendment: In (2) at end of first sentence, after "charged at", substituted "a rate to be established by the department by rule" for "the rate of $200 per person per day required to conduct the examinations of the respective licensees"; and inserted second sentence of (2) relating to recovery of costs.

Statement of Intent: The statement of intent attached to Ch. 600, L. 1985, provided: "A statement of intent is required for this bill because it authorizes the department of commerce [now department of administration] to adopt rules establishing fees for the examination of building and loan associations and consumer loan businesses. The bill also authorizes the department to establish fees for the examination of other financial institutions. It is the intent of the legislature that fees established under this bill be set to recover the costs of the program implemented."

1983 Amendment: In middle of (2), substituted "at the rate of $200 per person per day" for "at the rate of $100 per man per day".

Administrative Rules

ARM 2.59.308 Examination fees.

32-5-405. Injunctions — receivers.

Compiler's Comments

2007 Amendment: Chapter 372 in (1) at end substituted language authorizing action in name of state to temporarily or permanently enjoin unlawful method, act, or practice for "enter an order requiring such person to desist or to refrain from such violation"; substituted (2), (3), and (4) regarding content of notice, venue, and issuance of orders by court, respectively, for former (2) that read: "(2) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper"; and made minor changes in style. Amendment effective October 1, 2008.

32-5-407. Attorney fees — bad check fee.

Compiler's Comments

2015 Amendment: Chapter 23 in (2) after "check" inserted "draft, converted check, electronic funds transfer, or other authorization or order for the payment of money". Amendment effective October 1, 2015.

2007 Amendment: Chapter 372 in (2) near beginning substituted "fees" for "charges"; and made minor changes in style. Amendment effective October 1, 2008.

1999 Amendment: Chapter 270 in (2) increased maximum bad check charge from $10 to $25. Amendment effective October 1, 1999.

1985 Amendment: Inserted (2) allowing a bad check charge.

Case Notes

Implied Private Right of Action Under Consumer Loan Act: The Montana Consumer Loan Act (CLA) does not specifically provide for or prohibit a private right of action. Defendant contended that 32-5-401 provides that the Department of Administration is the sole entity authorized to seek a violation of the CLA in the courts. Plaintiffs argued that the remedy provisions of the CLA indicated a legislative intent consistent with allowing a private right of action because the remedy of violating a loan benefits the borrower. The Supreme Court agreed with plaintiffs that the CLA's remedial measures were not inconsistent with allowing a private right of action under the CLA. If only the Department of Administration could take action to enforce the CLA, there would be no need for this section providing that a party could be awarded attorney fees in an action on a contract entered pursuant to the CLA, and if the Legislature had wished to prohibit a private cause of action, it could have done so. Wombold v. Associates Financial Serv. Co. of Mont., Inc., 2004 MT 397, 325 M 290, 104 P3d 1080 (2004). See also Somers v. Cherry Creek Dev., Inc., & RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281, holding that a private right of action was not conferred by the Legislature relating to the Retail Installment Sales Act.

32-5-408. Cease and desist orders.

Compiler's Comments

2015 Amendment: Chapter 23 in (1) at beginning of first sentence substituted "If the department determines" for "If it appears to the department" and at end of first sentence substituted "after issuance and service of a notice and opportunity for an administrative hearing as provided in 32-5-207" for "after reasonable notice and opportunity for a hearing"; in (2) in two places substituted "14 days" for "10 days"; in (2)(b) substituted "issued and served" for "addressed" and substituted "after the date on which the notice was sent by certified mail as provided in 32-5-207" for "after receipt of the notice"; and made minor changes in style. Amendment effective October 1, 2015.

Effective Date: Section 24(1), Ch. 372, L. 2007, provided that this section is effective October 1, 2008.

32-5-409. Complaint procedure.

Compiler's Comments

Effective Date: Section 24(1), Ch. 372, L. 2007, provided that this section is effective October 1, 2008.

CHAPTER 6
ELECTRONIC FUNDS TRANSFER ACT

Chapter Compiler's Comments

Severability Clause: Section 23, Ch. 503, L. 1977, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Statement of Intent: The statement of intent to Ch. 503, L. 1977 (SB 170), approved by the House Committee on Business and Industry, read: "Since a section of this complex bill delegates authority to the Department of Business Regulation [now Department of Administration] to adopt rules necessary to effectuate and implement the act, the House Committee on Business and Industry submits this statement of the committee's intent and purpose for delegating this authority.

Electronic funds transfer is a new spin-off of computer technology into the banking industry. The industry favors electronic fund transfer systems (EFTS) because the checkless banking thus created will reduce the overhead costs of processing demand deposits—the check-clearing process. EFTS will also blur some of the legal distinctions between a bank, a savings and loan association, and a credit union. Thus, two highly detailed areas of law, the law of negotiable instruments and the laws which differentiate the roles of the various financial institutions, may be superseded in part by the advent of EFTS. Montana's branch banking law is also modified by SB 170. While the proposed bill addresses each of these modifications in considerable detail, the newness of the technology makes it impossible to anticipate and address every problem in a statute. Thus, the department will probably adopt rules to flesh out certain portions of the statute.

The definitions (section 3) have been amended in the House committee to permit a point-of-sale terminal in a store to be operated on either an instantaneous basis or a delayed-payment basis. The latter concept, called value-dating, is a tentative recommendation of the National Commission on Electronic Funds Transfer. As the National Commission's study progresses and more details of value-dating are worked out, the department may wish to adopt a rule to develop this definition under Montana law.

Under section 5, the bill deals with branching by limiting the placement of automated teller machines by banks and other financial institutions to the city where the institutions are located and a 3-mile fringe outside the city. Section 8 restates this limitation. Some federal savings and loan associations in Montana have branches in cities other than their home of operations. The department's rules may clarify that if such associations opt to participate in state-approved EFT systems, rather than develop their own systems under federal authorization, that they must abide by this geographical limitation when they offer EFTS services to their customers.

Section 6 deals with information which must be furnished to every consumer applying for an EFTS card. Rules of the department may specify size of type, bold-face type, etc., such as the Truth-in-Lending Act requires, for the presentation of this information.

Section 7 sets forth a mandatory sharing policy. The subcommittee which developed the House amendments to this bill is cognizant of the opposition to states' mandatory sharing policies by the U.S. Justice Department and the National Commission on EFT. Such views, based upon interpretations of the antitrust laws, have not been endorsed by the federal courts or Congress. A state's position, arguing that EFTS requires public utility-type regulation, may yet prevail with these final national authorities. In the event national policy should prohibit mandatory sharing laws, then the department would be expected to adopt rules for as much sharing as national policy would allow. Without sharing, the superior capital resources of the chain banks could allow them to monopolize the EFTS market.

Section 14 requires prior department approval for installation of an automated teller machine, based in part on a showing of adequate security provisions. The department would probably make rules in this area setting standards for alarm systems, human contact provisions in case of malfunction, etc. Section 18 permits the department to adopt a rule for a standard plastic card size. The new section 19 would allow the department to define, in a rule, a reasonable charge for conventional checking services, in case the banks move away from their current free-checking policies.

A few other rules may be adopted under other sections of the bill. This bill sets forth much more detailed regulation of EFTS than is found in the corresponding legislation of most other states, and the committee is satisfied that the volume of administrative rule-making will not be large under SB 170. As a guiding philosophy for all rulemaking activities, the committee expects the department to give consumer protection and safeguards the highest priority."

Part 1
General Provisions

32-6-102. Electronic funds transfer systems — applicability.

Compiler's Comments

2005 Amendment: Chapter 77 inserted (2) concerning financial institutions in compliance with Regulation E; and made minor changes in style. Amendment effective March 24, 2005.

1997 Amendment: Chapter 42 in third sentence, after "Electronic Fund Transfer Act", inserted "(15 U.S.C. 1693, et seq.)" and in fourth sentence, after "Title", substituted "32" for "30". Amendment effective March 12, 1997.

1995 Amendment: Chapter 265 substituted current text concerning electronic funds transfer systems for former text concerning findings and purpose (see 1995 Session Law for text); and made minor changes in style. Amendment effective March 27, 1995.

32-6-103. Definitions.

Compiler's Comments

2019 Amendment: Chapter 75 in (8) deleted former last sentence that read: "The term includes a detached drive-in or walk-up facility approved under 32-1-372." Amendment effective October 1, 2019.

2001 Amendment: Chapter 483 in definition of department after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 265 in definition of electronic funds transfer substituted current language for "debiting or crediting a depositor's account or otherwise transacting any business in a financial institution by electronic impulse messages, authorized under this chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies, or otherwise, and processing the adjustments without regular and customary direct human intervention. Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through normal human intervention"; inserted definition of electronic terminal; deleted definition of personal identification number that read: ""Personal identification number" means a combination of numerals or letters selected for a customer of a financial institution, merchant, or other person and used, in conjunction with a unique identification device, to initiate a request for an electronic funds transfer"; in definition of satellite terminal, in (b)(ii) in first sentence after "operated by a", inserted "customer", after "debit" inserted "or credit", and after "credit" inserted "or debit"; in definition of unique identification device, before "a number", inserted "either" and after "number" inserted "or a dollar balance, or both"; and made minor changes in style. Amendment effective March 27, 1995.

1989 Amendment: Near middle of (5) and at end of (10), after "financial institution", inserted "merchant, or other person"; near end of (10), after "customer", substituted "and issued by" for "with relation to"; and made minor changes in phraseology.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (8).

32-6-104. Consumer information — charge for use of electronic terminal.

Compiler's Comments

2003 Amendment: Chapter 186 inserted (3)(b) providing that an agreement by a financial institution to share or operate electronic terminals may not prohibit, limit, or restrict the right of the financial institution to charge a customer any fees allowed by state or federal law or to require a financial institution to waive any other rights or obligations it has under the laws of this state; and made minor changes in style. Amendment effective March 31, 2003.

1995 Amendment: Chapter 265 inserted (3) authorizing imposition of surcharge for use of terminal; and made minor changes in style. Amendment effective March 27, 1995.

1989 Amendment: Inserted (3) relating to assumed compliance by a merchant or person other than a financial institution; and made minor changes in phraseology.

Preamble: The preamble to Ch. 255, L. 1989, provided: "WHEREAS, it is desirable to revise the Montana Electronic Funds Transfer Act to address obligations of merchants and business organizations and to provide for the use of a personal identification number at a point-of-sale terminal as an alternative to obtaining a customer's signature."

32-6-105. Protection of privacy.

Compiler's Comments

1987 Amendment: Substituted (1)(a) and (1)(b) requiring customer consent or a subpoena for "consent of the customer or, if the customer refuses to so consent, under subpoena issued by a court of record"; and inserted (2) providing that compliance with a subpoena relieves a financial institution of liability.

Attorney General's Opinions

Customer's Financial Records: This section does not preclude the County Attorney from compelling disclosure of customer information by a financial institution pursuant to an investigative subpoena. 41 A.G. Op. 66 (1986).

Disclosure of Customer Information Pursuant to Investigative Subpoena: While this section creates a privacy protection for a customer, it does not preclude a County Attorney from compelling disclosure of a customer's electronic funds transfer information by a financial institution pursuant to an investigative subpoena. 41 A.G. Op. 66 (1986).

32-6-106. Unauthorized disclosure of electronic funds transfer records.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Operation

32-6-301. Records of electronic funds transfers.

Compiler's Comments

1995 Amendment: Chapter 265 inserted (3)(b) requiring account statement to identify location of machine; and made minor changes in style. Amendment effective March 27, 1995.

32-6-302. Verification of statement — procedure for discrepancies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-6-303. Unauthorized transactions — liability.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (4), after "financial institution", inserted "or the department"; and made minor changes in phraseology.

CHAPTER 7
ESCROW BUSINESSES

Part 1
Regulation of Escrow Businesses

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 651, L. 1989, provided: "A statement of intent is required for this bill because it grants rulemaking authority to the director of the department of commerce [now department of administration] to adopt rules to license and regulate escrow businesses.

The legislature intends that the rules adopted be designed to protect property buyers in this state by requiring those businesses that offer escrow services to become licensed and subject to state regulation and to prohibit certain unsound practices regarding the transaction of escrow services.

The legislature further intends that the director:

(1) make reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and

(2) make or amend those rules."

Severability: Section 18, Ch. 651, L. 1989, was a severability clause.

Part Administrative Rules

Title 2, chapter 59, subchapter 7, ARM Escrow business.

32-7-101. Title and purpose.

Compiler's Comments

2001 Amendment: Chapter 483 in (2) near beginning substituted "department of administration" for "financial division of the department of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

32-7-102. Definitions.

Compiler's Comments

2013 Amendment: Chapter 216 deleted definition that read: ""Director" means the director of the department of administration"; and made minor changes in style. Amendment effective April 16, 2013.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of administration for reference to department of commerce and substituted "part 10" for "part 18"; in definition of director after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

32-7-103. Exemptions.

Compiler's Comments

2013 Amendment: Chapter 216 in (1)(d) after "mortgage servicer" inserted exception clause; in (1)(e) in two places substituted reference to department for reference to director; inserted (1)(h) concerning loan closers; and made minor changes in style. Amendment effective April 16, 2013.

2011 Amendment: Chapter 317 inserted (1)(d) exempting mortgage brokers, mortgage lenders, and mortgage servicers; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

32-7-108. Department — powers and duties.

Compiler's Comments

2013 Amendment: Chapter 216 in three places substituted "department" for "director". Amendment effective April 16, 2013.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Administrative Rules

Title 2, chapter 59, subchapter 7, ARM Escrow business.

32-7-109. Application for license — bond — issuance.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 96 in (2) in second sentence after "writing" deleted "verified by oath"; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 216 in (2) substituted current language regarding submitting license applications for former text that read: "To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:

(a) the location of the applicant's principal office and all branch offices in this state;

(b) the name and form under which the applicant plans to conduct business;

(c) the general plan and character of the business;

(d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each the respective capacity and title;

(e) the experience and qualifications of the persons proposed to act as officers and managers;

(f) the length of time the applicant has been engaged in the escrow business; and

(g) any other relevant information the director requires"; in (3) in first sentence substituted "At the time of submitting an application for a license, the applicant shall file with the department" for "An applicant shall file with the license application", inserted second sentence concerning issuance of surety bonds, and in last sentence after "must be" deleted "filed with the department, approved by the department, and"; in (4) and (4)(a) substituted "department" for "director"; in (4)(a) after "application" deleted "specified in this section"; in (4)(b) substituted current language concerning compliance for "the applicant has complied with all the requirements of this part and any rules promulgated under it"; and made minor changes in style. Amendment effective April 16, 2013.

2003 Amendment: Chapter 65 inserted (3) concerning filing bond in amount set by rule; in (4)(a) near middle substituted "received the bond and application" for "received and filed the application"; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 2.59.701 Application procedure for authorization to engage in escrow business.

ARM 2.59.704 Escrow business bonding.

ARM 2.59.705 Adoption of standardized forms and procedures of the NMLS.

32-7-110. Fees.

Compiler's Comments

2013 Amendment: Chapter 216 in (1)(a) inserted second and third sentences concerning annual license renewal fees and remittance of fees to the department through a nationwide licensing system; in (1)(b) substituted current language concerning escrow business licenses for former text that read: "Licenses expire annually on June 30. A licensee shall, on or before June 1, pay an annual license renewal fee of $100. A licensee's failure to pay the annual license renewal fee within the time prescribed results in an automatic revocation of the license"; in (2) substituted "The department's portion of license fees and all examination fees must be deposited with" for "All fees collected by the department for the licensure and examination of escrow businesses must be paid to"; and made minor changes in style. Amendments to subsections (1)(a), (1)(c), and (2) effective April 16, 2013; amendment to subsection (1)(b) effective July 1, 2013.

Transition: Section 13, Ch. 216, L. 2013, provided: "The department shall charge one-half of the fees specified in 32-7-110(1)(a) for licenses issued or renewed for the period of July 1, 2013, through December 31, 2013."

2003 Amendment: Chapter 65 in (1)(a) at end substituted "an initial license fee of $350" for "a license fee set by the director, commensurate with the costs of licensing the applicant"; inserted (1)(b) concerning annual expiration of licenses and an annual renewal fee; and made minor changes in style. Amendment effective October 1, 2003.

32-7-111. Transferability.

Compiler's Comments

2013 Amendment: Chapter 216 in second sentence after "ownership of" substituted "a legal entity licensed as an escrow business under this part if the change of ownership involves a change of control in the entity" for "any escrow business, including the change of control over any corporation licensed as an escrow business" and in last sentence after "25% or more of the" substituted "ownership interests in the entity" for "outstanding voting stock of the corporation". Amendment effective April 16, 2013.

Administrative Rules

ARM 2.59.702 Change of ownership in escrow business.

32-7-112. Department authority to utilize nationwide licensing system for licensing escrow businesses.

Compiler's Comments

Effective Date: Section 15, Ch. 216, L. 2013, provided that this section is effective on passage and approval. Approved April 16, 2013.

32-7-115. Maintenance of records.

Compiler's Comments

2019 Amendment: Chapter 32 in (5) in last sentence substituted "statement must be reviewed by an independent public accountant every odd-numbered year" for "statement must be certified by an independent public accountant". Amendment effective October 1, 2019.

2013 Amendment: Chapter 216 in (1) in first sentence after "to enable the" substituted "department" for "director"; in (5) substituted current language concerning annual filing with the department for former text that read: "A licensee shall perform one of the following:

(a) file annually with the director, on or before April 30, a statement of its financial condition, transactions, and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good cause for an extension. The financial statement must be certified by an independent public accountant and must be in a form and contain the information prescribed by the director.

(b) request that the director examine the financial condition, transactions, and affairs of the licensee pursuant to procedures prescribed by the director". Amendment effective April 16, 2013.

32-7-117. Deposit of funds required — disbursement.

Compiler's Comments

2003 Amendment: Chapter 65 in (5) inserted second sentence concerning timing of required disbursements when there are sufficient funds; and made minor changes in style. Amendment effective October 1, 2003.

32-7-121. Unauthorized business practices — penalty.

Compiler's Comments

2013 Amendment: Chapter 216 deleted former (2) that read: "(2) Any licensee who engages in an unauthorized business practice is subject to the revocation or suspension of the licensee's license"; and made minor changes in style. Amendment effective April 16, 2013.

32-7-122. Investigations by department — desist order — injunctions or other actions.

Compiler's Comments

2013 Amendment: Chapter 216 throughout section in six places substituted "department" for "director"; in (2)(a) near beginning after "is about to engage in" inserted "unlicensed activity or" and in last sentence before "Lewis and Clark County" deleted "the first judicial district of"; and made minor changes in style. Amendment effective April 16, 2013.

Administrative Rules

ARM 2.59.703 Examination of escrow business.

32-7-123. Subpoenas — oaths — examinations of witness and evidence.

Compiler's Comments

2013 Amendment: Chapter 216 throughout section in three places substituted "department" for "director"; in (2) before "Lewis and Clark County" deleted "the first judicial district of"; and made minor changes in style. Amendment effective April 16, 2013.

32-7-124. Hearings — penalties.

Compiler's Comments

2019 Amendment: Chapter 32 in (4) in introductory clause after "service of process" substituted "by sending by common courier with tracking capability" for "upon mailing by certified mail". Amendment effective October 1, 2019.

2013 Amendment: Chapter 216 inserted (1) through (5) concerning civil penalties, restitution to parties and reimbursement to department, revocation and suspension of right to engage in escrow business, notice of hearing schedules and orders, service of process, and venue; and made minor changes in style. Amendment effective April 16, 2013.

CHAPTER 9

RESIDENTIAL MORTGAGE BROKERS, LENDERS, SERVICERS, AND LOAN ORIGINATORS

Part 1

Montana Mortgage Act

Part Compiler's Comments

Effective Date: Section 24, Ch. 516, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 25, 2003.

Source: Senate Bill No. 351 (Ch. 321, L. 2009), amending this part, is partially based on model state legislation from the Conference of State Banking Supervisors and the American Association of Residential Mortgage Regulators, regarding implementation of the Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act, Public Law 110-289.

Part Administrative Rules

Title 2, chapter 59, subchapter 17, ARM Mortgage broker and loan originator licensing.

Part Law Review Articles

Recent Development: Housing and Economic Recovery Act of 2008, Arthur, 46 Harv. J. on Legis. 585 (2009).

A Taxonomic Analysis of Mortgage Broker Licensing Statutes: Developing a Programmatic Response to Predatory Lending, Wilson, 36 N.M.L. Rev. 297 (2006).

Effecting Responsibility in the Mortgage Broker-Borrower Relationship: A Role for Agency Principles in Predatory Lending Regulation, Wilson, 73 U. Cin. L. Rev. 1471 (2005).

32-9-101. Short title and purpose.

Compiler's Comments

2013 Amendment: Chapter 125 in (3) at end substituted "NMLS" for "nationwide mortgage licensing system and registry". Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) substituted "Montana Mortgage Act" for "Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act"; in (2) in second sentence inserted "mortgage servicers"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 in (1) inserted "Mortgage Lender" and before "Loan Originator" inserted "Mortgage"; in (2) in second sentence after "license" substituted "certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including mortgage brokers, mortgage lenders, and mortgage loan originators" for "residential mortgage brokers and loan originators"; and inserted (3) concerning implementation of federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

32-9-102. License requirement — registration.

Compiler's Comments

2015 Amendment: Chapter 24 in (1) substituted "licensed or registered under the provisions of this part through the NMLS" for "licensed under the provisions of this part or registered through the NMLS with a unique identifier assigned"; deleted former (2) that read: "(2) A person regularly engaging in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator under this part is required to be licensed through, registered with, and maintain a valid unique identifier issued by the NMLS"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 in (1) after "may not" substituted "regularly engage in the business of" for "act as", after "residential mortgage loan" deleted "located in Montana", and at end inserted "or registered through the NMLS with a unique identifier assigned"; in (2) after "person" substituted "regularly engaging in the business of" for "acting as" and at end substituted "NMLS" for "nationwide mortgage licensing system and registry"; and inserted (3) prohibiting employing unlicensed persons. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) and (2) inserted "mortgage servicer"; in (1) substituted "residential mortgage loan" for "residential real estate"; in (2) at end after "registry" deleted "by the date set forth in 32-9-105(4)"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 in (1) at beginning inserted "Unless exempt under 32-9-104" after "person" deleted "or entity", before "mortgage broker" deleted "residential", inserted "mortgage lender", before "loan originator" inserted "mortgage" and after "originator" inserted "with respect to any residential real estate located in Montana"; deleted former (2) that read: "(2) A mortgage banker who provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for a borrower that is to be secured by a residential dwelling for between one and four families is acting as a mortgage broker and must be licensed as a mortgage broker"; inserted (2) concerning licensure, registration, and maintenance of unique identifier; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2005 Amendment: Chapter 301 in (1) after "originator" deleted "after September 1, 2004"; inserted (2) concerning situation in which mortgage banker is required to be licensed as mortgage broker; and made minor changes in style. Amendment effective October 1, 2005.

32-9-103. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 4, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 65 inserted definition of service provider; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 24 inserted definitions of clerical or support duties, independent contractor entity, and responsible individual; in definition of advertising after "medium" inserted "including social media and software" and substituted "loan" for "lending"; in definition of loan processor or underwriter in (a) substituted "clerical or support duties" for "administrative or clerical tasks"; in definition of mortgage broker in (a) at end after "consideration" inserted "or holds itself out as being able to assist a person in obtaining a mortgage loan"; in definition of mortgage lender after "applicant" inserted "or holds itself out as being able to perform any of those functions"; in definition of mortgage loan originator inserted (b) concerning individuals included as mortgage loan originators and in (c)(i) substituted "32-9-135" for "32-9-129"; in definition of mortgage servicer inserted (c) concerning an entity's representations to the public; throughout definition of regularly engage substituted "five residential mortgage loans" for "12 residential mortgage loans"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendments — Composite Section: Chapter 123 in definition of dwelling substituted "15 U.S.C. 1602(w)" for "15 U.S.C. 1602(v)"; in definition of federal banking agency after "comptroller of the currency" deleted "the director of the office of thrift supervision"; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 125 inserted definitions of advertising, application, bona fide not-for-profit entity, commercial context, expungement, housing finance agency, independent contractor, and regularly engage; deleted definition that read: ""Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships"; deleted definition that read: ""Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees"; deleted definition that read: ""Trust account funds" means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of services provided by a bona fide third party, which does not include the services of a mortgage broker, mortgage lender, or mortgage loan originator. The term includes appraisal fees, credit report fees, and other fees required for the mortgage loan origination"; in definition of administrative or clerical tasks after "underwriting of" substituted "a loan in the mortgage industry, without performing any analysis of the information" for "a residential mortgage loan" and at end deleted "to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms"; in definitions of approved education course and approved test provider substituted "NMLS" for "nationwide mortgage licensing system and registry"; in definition of control in (b)(i) inserted "or is an individual that occupies a similar position or performs a similar function"; in definition of dwelling substituted "15 U.S.C. 1602(w)" for "15 U.S.C. 1602(v)"; in definition of loan processor or underwriter in (a) after "who" inserted "with respect to the origination of a residential mortgage loan" and after "employee" deleted "subsequent to the receipt of a residential mortgage loan application" and inserted (b) defining origination of a residential mortgage loan; in definition of nationwide mortgage licensing system and registry near beginning inserted "or "NMLS"", before "licensing system" deleted "mortgage", and at end after "registration" substituted "and licensing of persons providing nondepository financial services" for "of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage servicers, state-licensed mortgage loan originators, and registered mortgage loan originators"; in definition of registered mortgage loan originator in (a)(ii) substituted "wholly owned" for "owned" and in (b) substituted "NMLS" for "nationwide mortgage licensing system and registry"; in definition of unique identifier substituted "NMLS" for "nationwide mortgage licensing system and registry"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendments — Composite Section: Chapter 19 in definition of immediate family member inserted "parent"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 317 in definition of bona fide third party in first sentence substituted "to the origination of a residential mortgage loan" for "to residential mortgage loan transactions"; in definition of borrower at end inserted reference to obligor on residential mortgage loan; in definition of branch office in first sentence inserted "at which a licensee conducts business" and inserted second sentence and (6)(a) through (6)(d) outlining indicators of branch office; inserted definition of dwelling; in definition of escrow account inserted "or mortgage servicer"; in definition of escrow funds inserted "or mortgage servicer"; deleted definition that read: ""Mortgage servicer loss mitigation specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process"; inserted definition of mortgage servicer; in definition of nationwide mortgage licensing system and registry near end inserted "state-licensed mortgage servicers"; in definition of residential mortgage loan after "dwelling" deleted "as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v)"; inserted definition of trust account funds; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 inserted definitions of administrative or clerical tasks, approved education course, approved test provider, control, depository institution, escrow account, escrow funds, federal banking agency, immediate family member, individual, licensee, loan commitment, loan processor or underwriter, mortgage lender, mortgage loan originator, mortgage servicer loss mitigation specialist, nationwide mortgage licensing system and registry, nontraditional mortgage product, person, real estate brokerage activities, registered mortgage loan originator, residential mortgage loan, residential real estate, ultimate equity owner, and unique identifier; in definition of bona fide third party in first sentence after "person" deleted "or entity"; substituted definition of borrower for former definition that read: ""Borrower" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending"; substituted definition of designated manager for former definition that read: ""Designated manager" means a person located in this state and employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker"; in definition of entity near middle substituted "including" for "other than" and at end deleted "or an individual person, that provides mortgage broker services"; deleted former definition of lender that read: ""Lender" means an entity that funds or services a residential mortgage loan"; deleted former definition of loan originator that read: ""Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan"; deleted former definition of mortgage banker that read: ""Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association"; substituted definition of mortgage broker for former definition that read: ""Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families"; deleted former definition of originate that read: ""Originate" means:

(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

(b) to issue a commitment for a mortgage loan to a borrower; or

(c) to place, assist in placing, or find a mortgage loan for a borrower"; in definition of trust account after "mortgage broker" inserted "or the mortgage lender"; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 inserted definition of branch office; in definition of designated manager near beginning inserted "located in this state and"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 136 in definition of mortgage broker at end after "families" deleted "located on real property purchased by the borrower with the loan provided by the lender". Amendment effective October 1, 2005.

32-9-104. Exemptions — proof of exemption.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 4, L. 2023. Amendment effective July 1, 2023.

2015 Amendment: Chapter 24 in (1)(c) and (1)(d) substituted "32-9-103(38)(a)(i) through (38)(a)(iii)" for "32-9-103(36)(a)(i) through (36)(a)(iii)"; deleted former (4) that read: "(4) A person who is exempt from licensure or is not required to be licensed or registered under this part may register on the NMLS as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendments — Composite Section: Chapter 123 in (3) after "system" inserted "and registry". Amendment effective October 1, 2013. The amendment by Ch. 125 rendered the amendment by Ch. 123 void.

Chapter 125 in (1)(a) substituted "state, tribal, or local government" for "state, or municipal government"; inserted (1)(b) regarding individuals not subject to provisions of part; in (1)(c) and (1)(d) substituted "32-9-103(36)(a)(i) through (36)(a)(iii)" for "32-9-103(30)(a)(i) through (30)(a)(iii)"; deleted former (1)(d) through (1)(j) that read: "(d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;

(e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;

(f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;

(g) an entity engaged solely in commercial real estate lending;

(h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;

(i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;

(j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals"; inserted (1)(e) exempting individuals performing only administrative or clerical tasks; inserted (1)(f) and (1)(g) exempting not-for-profit entities and employees; in (1)(h) in four places after "mortgage" substituted "broker" for "lender"; inserted (1)(i) exempting person preparing abstracts for issuance of title insurance; in (1)(j) after "attorney" substituted current language for former language that read: "who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator"; inserted (1)(k) exempting employee of manufactured or modular home retailer; deleted former (1)(m) that read: "(m) a Montana-licensed certified public accountant or a Montana-licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator"; inserted (2) regarding qualifying for exemption as bona fide not-for-profit entity; in (3) deleted second and third sentences that read: "A person seeking an exemption under subsection (1)(a), (1)(b), (1)(c), (1)(f), (1)(h), (1)(j), (1)(l), or (1)(m) is required to obtain a written exemption from the department before the exemption applies. The department shall create a form for requesting an exemption"; in (4) after "licensure" substituted "or is not required to be licensed or registered under this part" for "under subsection (1)" and substituted "NMLS" for "nationwide mortgage licensing system"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1)(b) and (1)(c) substituted "32-9-103(30)(a)(i) through (30)(a)(iii)" for "32-9-103(29)(a)(i) through (29)(a)(iii)"; in (1)(l) and in (1)(m) in two places substituted "Montana-licensed" for "licensed"; deleted former (2) that read: "(2) The department or the secretary of housing and urban development may exempt from this part mortgage servicer loss mitigation specialists if the department or the secretary of housing and urban development determines by guideline, interpretation, or rule that an exemption of a mortgage servicer loss mitigation specialist is not in violation of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289"; in (2) inserted second sentence requiring written exemption; inserted (3) allowing registration on nationwide mortgage licensing system; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 substituted current text for former text that read: "The provisions of this part do not apply to:

(1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;

(2) (a) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and

loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;

(b) any employee of an entity listed in subsection (2)(a); or

(c) any subsidiary of an entity listed in subsection (2)(a) and any employee of the subsidiary if the subsidiary is subject to the examination and supervision of:

(i) the department;

(ii) the federal deposit insurance corporation;

(iii) the federal reserve system;

(iv) the national credit union administration; or

(v) the department of the treasury through its office of the comptroller of the currency or office of thrift supervision;

(3) a person or entity engaged solely in commercial mortgage lending; or

(4) a political subdivision or governmental entity of the United States or any state of the United States." Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2005 Amendment: Chapter 301 inserted (2)(b) concerning employees; inserted (2)(c) concerning subsidiaries; deleted former (5) that read: "(5) a mortgage banker, except that a mortgage banker that also provides services as a mortgage broker for more than four mortgage loans in a calendar year must be licensed as a mortgage broker with respect to those mortgage broker services"; and made minor changes in style. Amendment effective October 1, 2005.

32-9-105. Nationwide mortgage licensing system for mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators.

Compiler's Comments

2015 Amendment: Chapter 24 deleted former (2)(c) that read: "(c) for procedures to amend or to surrender a license"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 throughout section substituted "NMLS" for "nationwide mortgage licensing system and registry"; in (1) in two places after "mortgage" substituted "brokers" for "lenders"; in (3) at beginning substituted "department's" for "state"; deleted former (4) that read: "(4) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) inserted "mortgage servicers" and at end after "registry" deleted "by the dates set forth in subsection (4)"; in (2) after first "requirements" inserted "through rulemaking"; deleted former (4) that read: "(4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (1) is:

(a) April 1, 2010, for all new applicants applying after July 1, 2009;

(b) June 30, 2010, for all licensees with current licenses as of July 1, 2009; and

(c) for mortgage servicer loss mitigation specialists, if not exempt under 32-9-104(2), a date as set by the department by rule"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-106. Simultaneous licensure.

Compiler's Comments

2011 Amendment: Chapter 317 inserted "a mortgage servicer" and at end substituted "licensure for each license type" for "licensure as a mortgage lender and a mortgage broker"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-107. Prelicensing education requirements for mortgage loan originators.

Compiler's Comments

2015 Amendment: Chapter 24 in (2) substituted reference to subsections (1)(a), (1)(b), and (1)(c) for reference to subsection (1). Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 inserted (2) regarding requiring additional training; in (3) substituted "NMLS" for "nationwide mortgage licensing system and registry"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) after "include" inserted "at least"; in (1)(a) at beginning deleted "at least"; deleted former (3) that read: "(3) If allowed by the nationwide mortgage licensing system and registry, the department is authorized to certify to the nationwide mortgage licensing system and registry that continuing education hours that were previously approved by the department have been completed by a mortgage loan originator." Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-109. Experience requirements.

Compiler's Comments

2015 Amendment: Chapter 24 inserted (2) concerning experience requirements for responsible individuals; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 deleted former (1)(b) that read: "(b) An individual applying for a license as a mortgage loan originator must have a minimum of 6 months of experience working in a related field"; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 321 in (1)(a) near beginning after "individual" substituted "may not act as a designated manager without" for "applying for a license as a mortgage broker must have" and near end before "loan originator" inserted "mortgage" and after "originator" deleted "as a mortgage banker"; in (1)(b) before "loan originator" inserted "mortgage"; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 in (1) at beginning deleted former lead-in that read: "Except as provided in 32-9-111"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 301 in (1)(a) near end inserted "as a mortgage banker"; and made minor changes in style. Amendment effective October 1, 2005.

32-9-110. Examination requirements for mortgage loan originators.

Compiler's Comments

2013 Amendment: Chapter 125 in (2) substituted "NMLS" for "nationwide mortgage licensing system and registry". Amendment effective October 1, 2013.

2009 Amendment: Chapter 321 substituted current text for former text that read: "(1) Individuals seeking a mortgage broker's license and individuals seeking a loan originator's license shall submit to an examination provided for by the department. The department may use a third party to perform examination and grading services.

(2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:

(a) knowledge of this part;

(b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;

(c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments; and

(d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application." Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 in (1) at beginning deleted "Except as provided in 32-9-111, all"; and made minor changes in style. Amendment effective October 1, 2007.

32-9-112. Application for mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator license — renewals.

Compiler's Comments

2015 Amendment: Chapter 24 in (1) at end of first sentence substituted "the forms prescribed by the NMLS" for "a form prescribed by the department that complies with the requirements of the NMLS", deleted former last sentence that read: "Each form must contain content as set forth by the NMLS and may be changed or updated by the department as necessary to comply with the NMLS", and inserted last sentence requiring the use of NMLS forms and policies for licensing actions. Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 throughout section substituted "NMLS" for "nationwide mortgage licensing system and registry"; in (4) and (5) inserted "For the purposes of this section and" and after "may" substituted "have" for "be required"; deleted former (6) that read: "(6) The department shall issue a license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under 32-9-120"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) in first sentence inserted "or renewal of a license"; in (3) after "applicant" inserted "for a license or license renewal"; deleted former (3)(b) that read: "(b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-113. Control persons — application for license — renewal.

Compiler's Comments

2015 Amendment: Chapter 24 substituted "each person with control, as defined in 32-9-103, of the entity" for "each of the following"; deleted former (1) through (3) that read: "(1) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;

(2) control persons of the applicant if the control persons are individuals; and

(3) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity"; and made minor changes in style. Amendment effective October 1, 2015.

2011 Amendment: Chapter 317 in introductory clause substituted "a state license or license renewal" for "state licensure" and substituted "32-9-120(1)(a) through (1)(c) and (1)(g)" for "32-9-120(1)(a) through (1)(d)". Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-116. Employment of mortgage loan originator.

Compiler's Comments

2013 Amendment: Chapter 125 in (2) in two places substituted "NMLS" for "nationwide mortgage licensing system and registry" and in first sentence before "mortgage broker" inserted "sponsoring". Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) deleted former second and third sentences that read: "Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker or employing mortgage lender at the employing licensee's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business"; in (2) in first sentence after "shall" deleted "return the mortgage loan originator's license to the department within 5 business days after the termination and", deleted former second sentence that read: "For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by complying with the nationwide mortgage licensing system and registry procedures and paying a fee established by the department by rule", inserted second and third sentences relating to "Approved-Inactive" and "Terminated-Expired" license status, in fourth sentence after first "mortgage loan originator" substituted "extinguishes" for "that is not transferred to another mortgage broker or mortgage lender terminates", and deleted former last sentence that read: "The license of any mortgage loan originator that has been removed from sponsorship and not transferred within 6 months of termination of employment must be canceled"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 deleted former (1) and (2) that read: "(1) An application for a loan originator license must include:

(a) the name and address of the applicant;

(b) evidence of the applicant's experience and knowledge of the mortgage industry; and

(c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing.

(2) The department shall investigate each applicant. The investigation shall include a criminal records check based on the fingerprints of the applicant and a civil records check. The

department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings"; in (1) in four places and in (2) in six places before reference to loan originator inserted "mortgage"; in (1) in first and second sentences after "broker" inserted reference to employing mortgage lender and in second sentence substituted "employing licensee's" for "mortgage broker's"; in (2) in three places after "broker" inserted reference to mortgage lender and at end inserted "and remove sponsorship of the mortgage loan originator on the nationwide mortgage licensing system and registry within 5 business days of the termination", in second sentence near middle after "by" substituted "complying with the nationwide mortgage licensing system and registry procedures and paying" for "submitting a relocation application to the department, along with", in third sentence at beginning substituted "removal of sponsorship" for "return", after "originator" deleted "to the department", near middle after "activity until" substituted "nationwide mortgage licensing system and registry" for "department", and near end substituted "sponsor" for "reinstate", and in fourth sentence near middle substituted "removed from sponsorship" for "returned to the department"; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

32-9-117. Fees — disposition of fees — rulemaking.

Compiler's Comments

2013 Amendment: Chapter 125 in (1)(a) substituted current language regarding application fees for former language that read: "An entity seeking licensure as a mortgage broker shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of $500 and an additional application fee of $250 for any branch office. A mortgage loan originator shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of $400. An entity seeking licensure as a mortgage lender shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of $750 and an additional application fee of $250 for any branch office. An entity seeking licensure as a mortgage servicer shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of $750 and an additional nonrefundable application fee of $250 for each branch office"; in (1)(b) after "pay" deleted "through the nationwide mortgage licensing system and registry an initial nonrefundable"; inserted (2) regarding nonrefundable fees; inserted (3) regarding department establishing fees; deleted former (2) and (3) that read: "(2) The license of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator is valid for up to a 1-year period and expires on December 31. A state licensee shall submit a renewal application and pay to the nationwide mortgage licensing system and registry a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The fees set by the department must be commensurate with the costs of the program. If the required information or fees are not submitted within the time prescribed, the license will automatically be placed in "Terminated-Expired" status. The department may adopt procedures for reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry.

(3) An application for renewal of a mortgage loan originator license must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the licensee has paid all fees for renewal of the license"; in (4) substituted "department's portion" for "state portion"; deleted former (5) that read: "(5) An applicant for a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license renewal shall apply for state licensure on an application form approved

by the nationwide mortgage licensing system and registry"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1)(a) at beginning deleted "Except as provided in subsection (1)(b)", in first three sentences after "shall pay" inserted "through the nationwide mortgage licensing system and registry", in first and third sentences at end substituted "office" for "location", deleted former fourth sentence that read: "An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months", and inserted fourth sentence relating to licensure of mortgage servicer; in (1)(b) substituted language regarding license fee of $100 paid through nationwide mortgage licensing system and registry for former language that read: "An individual who is seeking licensure as a mortgage loan originator and who is the owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of $500"; in (2) in first sentence inserted "mortgage servicer", after "valid for" inserted "up to", and at end inserted "and expires on December 31", deleted former fourth and fifth sentences that read: "The department shall establish a single renewal fee for individuals and entities described in subsection (1)(b). An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager", and in fifth sentence at end substituted "license will automatically be placed in "Terminated-Expired" status" for "license automatically expires"; in (3) near beginning inserted "of a mortgage loan originator license"; in (5) inserted "mortgage servicer"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 in (1)(a) in first sentence near beginning after (1)(b) deleted "an individual mortgage broker or" and at end inserted "and an additional application fee of $250 for any branch location", in second sentence at beginning before "loan originator" inserted "mortgage", and inserted third sentence concerning initial application fee and branch location fee; in (1)(b) near middle substituted "loan originator" for "broker" and after "who is the" deleted "sole"; in (2) in first sentence near beginning after "broker" inserted "mortgage lender", before "loan originator" inserted "mortgage", and at end deleted "and expires on June 30", in second sentence at beginning substituted "A state licensee shall" for "Every licensee shall, on or before May 31 of the year" and near middle substituted "nationwide mortgage licensing system and registry" for "department", in fourth sentence at end deleted "that are licensed as mortgage brokers", in seventh sentence at end substituted "means the license automatically expires" for "automatically revokes the license", and inserted last sentence concerning adoption of procedures for reinstatement of expired licenses; in (3) inserted second sentence concerning demonstration of meeting standards in application for renewal; in (4) at beginning inserted "the state portion of"; inserted (5) concerning applying on form approved by nationwide mortgage licensing system and registry; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 in (2) in second sentence near middle inserted "submit a renewal application and" and inserted third sentence relating to rules for renewal applications. Amendment effective October 1, 2007.

2005 Amendment: Chapter 368 in (1)(a) at beginning inserted exception clause; inserted (1)(b) concerning individual seeking licensure who is sole owner of an entity seeking licensure; in (2) inserted second and third sentences concerning single renewal fee and no additional fees for individual acting as designated manager; and made minor changes in style. Amendment effective April 21, 2005.

32-9-118. Continuing education requirements for mortgage loan originators.

Compiler's Comments

2013 Amendment: Chapter 125 in (1) and (3) substituted "NMLS" for "nationwide mortgage licensing system and registry"; and in (6) in second sentence substituted "provision of subsection (4) that credit may be given only in the year a course is taken" for "provisions of subsection (4)". Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) in two places and in (2) substituted "8 hours" for "12 hours"; in (3) inserted reference to (2); inserted (4) relating to limiting credit to year in which course taken; inserted (5) relating to instructor credit; in (6) inserted second sentence excepting requirements from (4); and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 in (1) in first sentence substituted "mortgage loan originators" for "loan originators and all individual mortgage brokers" and near middle substituted "nationwide mortgage licensing system and registry" for "department" and at end of second sentence substituted "obtained in an approved education course" for "in courses or programs of study approved by the department and in areas established by the department by rule"; inserted (2) concerning content of courses; inserted (3) concerning credit toward Montana continuing education requirements; inserted (4) concerning continuing education requirements prior to issuance of new or renewed license; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license application or license renewal.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 4, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 65 inserted (1)(h) and (1)(i) relating to failure to meet requirements in 32-9-171 and 32-9-172; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 125 in (1)(a) near beginning before "mortgage loan originator" deleted "mortgage broker, mortgage lender, mortgage servicer, or"; in (1)(b) near middle after "pardon" inserted "or expungement" and inserted last sentence regarding department consideration of underlying crime; in (1)(d) inserted "and maintained"; inserted (1)(h) regarding violations pertaining to loan originator national or state test; in (2) substituted current language regarding abandoned application for former language that read: "The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c)"; inserted (3) regarding denial of application based on pardoned or expunged felony conviction; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1), (1)(a), and (1)(c) inserted "mortgage servicer"; in (1)(d) substituted "has not provided the surety bond" for "has not met the surety bond or net worth requirement"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-121. Records maintenance.

Compiler's Comments

2013 Amendment: Chapter 125 in (1) in first sentence before "escrow account" deleted "trust account or" and deleted former third sentence that read: "Each office must have at least one phone line"; and deleted former (5) that read: "(5) (a) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:

(i) a name and unique identifier for each mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator advertising as an individual; or

(ii) the name and unique identifier only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers, mortgage lenders, mortgage servicers, or mortgage loan originators also listed.

(b) For the purposes of this subsection (5), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's, a mortgage lender's, a mortgage servicer's, or a mortgage loan originator's unique identifier but is not required to list the entity's unique identifier if the entity's name is listed." Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (2) in two places and in (5)(a)(i), (5)(a)(ii), and (5)(b) inserted reference to mortgage servicer; inserted (3) regarding preservation of records; inserted (4) requiring department to adopt rules regarding records; in (5)(a)(i), (5)(a)(ii), and (5)(b) in two places substituted "unique identifier" for "license number"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 in (1) at beginning deleted "Except for an individual mortgage broker working as an employee of a licensed mortgage broker, a person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state", in first sentence near middle after "trust account" inserted "or escrow account", in second sentence at beginning after "The" deleted "required materials must be maintained at the Montana office location where services are provided, and the", deleted former last sentence that read: "Licensees shall pay state income tax on all income earned in Montana", and inserted last sentence concerning maintenance of books and records for usual business location outside of this state; in (2) in first and second sentences after "broker" inserted "or mortgage lender" and in second sentence after "trust account" inserted "or escrow account"; in (3)(a) after "published" deleted "televised"; in (3)(a)(i) and (3)(a)(ii) after "name" deleted "address", after reference to "broker" inserted reference to "mortgage lender", and before reference to "loan originator" inserted "mortgage"; in (3)(b) in second sentence after "broker's" inserted "a mortgage lender's or a mortgage"; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 in (1) in first sentence at beginning inserted exception clause and substituted second and third sentences concerning records that licensees must maintain to enable the department to determine licensee compliance and concerning location of required materials for "Licensees shall maintain copies of residential mortgage loan files and trust account records at the Montana office location where services are provided"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 136 in (3)(a) at beginning deleted "A licensee or licensed entity shall disclose" and after "services" inserted "the following information must be included"; inserted (3)(a)(i) requiring advertisement to include name, address, and license number for each mortgage broker or loan originator; in (3)(a)(ii) substituted language requiring inclusion of name, address, and license number of licensed entity only when entity is advertising on its own behalf or when mortgage brokers or loan originators listed for former language that read: "the name and address of the licensee and the number designated on the license issued to the licensee or licensed entity by the department"; inserted (3)(b) providing that advertising requirement includes business cards, but not stationery or business forms, and requiring business cards to include license number or entity name; and made minor changes in style. Amendment effective October 1, 2005.

32-9-122. Designated manager and branch office license requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 4, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 65 in (2) in first sentence after "main office and" deleted "shall designate a separate designated manager to serve" and at end inserted text allowing a designated manager to be responsible for more than one location and mortgage origination activities at each location; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 24 in (1) inserted last sentence concerning office locations; in (5) and (6) substituted "federal or state laws, rules, or regulations" for "federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 in (1), (2), (7), and (8) substituted "NMLS" for "nationwide mortgage licensing system and registry"; deleted former (2) that read: "(2) A mortgage broker entity shall designate to the nationwide mortgage licensing system and registry an individual who is licensed by this state as a mortgage loan originator to serve as the designated manager of the main office and a separate designated manager to serve at each branch office"; in (2) at beginning substituted "mortgage broker or mortgage lender" for "mortgage lender entity"; in (5) after "mortgage lender" deleted "entity" and after "conduct of" substituted "its employees" for "a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage broker or mortgage lender entity"; in (6) near end after "each" substituted "employee of the mortgage broker or mortgage lender" for "mortgage loan originator employed by the entity while the designated manager is employed"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) inserted "or mortgage servicer"; in (2) at end substituted "branch office" for "branch location"; in (3) at end substituted "branch office that originates a residential mortgage loan" for "branch location"; in (6) and (7) after "federal laws" inserted "and regulations"; in (8) near beginning after "mortgage broker or" substituted "mortgage lender" for "mortgage loan originator" and after "licensed as a" substituted "mortgage loan originator" for "mortgage broker"; in (9) after "shall" deleted "return the designated manager's license to the department within 5 business days of the termination and"; inserted (10) imposing responsibility on mortgage servicer for acts of employees, agents, and independent contractors; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 inserted (1) concerning license application for each office and branch office; substituted (2) concerning designation of manager for former text that read: "A mortgage broker that is not a sole proprietorship shall designate to the department an individual within its organization who is located in this state and is licensed as a mortgage broker as the designated manager of the organization"; inserted (3) concerning designated manager; inserted (4) concerning experience requirements for designated manager; inserted (5) concerning designated manager responsibility; inserted (6) concerning responsibility for conduct of designated manager; inserted (7) concerning designated manager responsibility for conduct violating federal law; in (8) near beginning after "broker" inserted "or mortgage loan originator" and near middle substituted "to the nationwide mortgage licensing system and registry" for "in writing to the department"; in (9) near beginning after "broker" inserted "or mortgage lender" and at end inserted "and remove the sponsorship of the designated manager on the nationwide mortgage licensing system and registry within 5 business days of the termination"; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 in (1) near middle inserted "who is located in this state"; inserted (3) relating to the return of a terminated manager's license; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 368 in (1) near middle after "department" inserted "an individual"; in (2) near middle after "another" inserted "individual"; and made minor changes in style. Amendment effective April 21, 2005.

32-9-123. Surety bond requirement — notice of legal action.

Compiler's Comments

2019 Amendment: Chapter 65 in (2)(b)(ii) after "annual loan production of" inserted "more than"; in (2)(c) after "bond for a mortgage servicer" substituted current text for "is $100,000"; inserted (2)(c)(i), (2)(c)(ii), (2)(c)(iii), and (2)(c)(iv) providing surety bond amounts; in (3) in first sentence after "give notice to the department" deleted "by certified mail or"; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 24 in (3) in first sentence after "mail" inserted "or through the NMLS"; in (4)(a) and (4)(b) after "department" inserted "through the NMLS"; and in (6) near beginning of first sentence after "department" inserted "or with the NMLS" and at end of first sentence after "department" inserted "through the NMLS". Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 in (1)(b) near end after "mortgage lender" inserted "mortgage servicer". Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1)(a) in second sentence near beginning after "employee of" deleted "or exclusive agent for"; in (1)(b) inserted first sentence requiring bond to run to state as obligee and in second sentence after "borrowers" inserted "the department"; in (2)(a) at beginning substituted "An entity licensed as a mortgage broker" for "A mortgage broker" and after "mortgage lender" inserted " and mortgage servicer"; inserted (2)(c) setting amount of surety bond at $100,000; deleted former (3) and (4) that read: "(3) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement.

(b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.

(c) The department shall adopt rules with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this part.

(4) Evidence that a mortgage broker is approved by the department of housing and urban development to originate loans insured by the federal housing administration must be considered as satisfying the net worth requirement provided that the actual net worth determined in the department of housing and urban development's approval is equivalent to the bond amount set forth for the corresponding dollar amount range set forth in subsections (2)(b)(i) through (2)(b)(iii)"; in (3) in first sentence in two places inserted "mortgage servicer", in second sentence after "mortgage lender" inserted reference to mortgage servicer and mortgage loan originator, and at end substituted "or mortgage servicer entity" for "or a mortgage loan originator"; inserted (4) relating to requiring notice to department of action against obligor; inserted (5) requiring notice to department of payment by surety; inserted (6) requiring notice to department of cancellation of bond; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 substituted (1)(a) concerning surety bond for former first sentence that read: "Each mortgage broker, other than an individual mortgage broker working as an employee of a mortgage broker, shall maintain at all times an irrevocable letter of credit or surety bond, naming the department as a beneficiary, in the amount of $25,000 for each principal location and branch office identified in the application for licensure"; in (1)(b) near beginning after "proceeds of the" deleted "letters of credit or" and near end substituted "mortgage broker, mortgage lender, or mortgage loan originator" for "licensee"; inserted (2) concerning maintenance of surety bond in designated amounts; inserted (3) concerning minimum net worth and adoption of rules; inserted (4) concerning HUD approval; in (5) in four places after reference to broker inserted reference to mortgage lender, in two places before reference to loan originator inserted "mortgage", and in first sentence before "knowledge" inserted "obtaining"; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 in (1) in first sentence near beginning substituted "mortgage broker, other than an individual mortgage broker working as an employee of a mortgage broker" for "licensee other than a loan originator" and near middle substituted "each principal location and branch office" for "each location". Amendment effective October 1, 2007.

32-9-124. Prohibitions — required disclosure.

Compiler's Comments

2013 Amendment: Chapter 125 in (1)(b) inserted "a mortgage broker" and "a mortgage servicer"; deleted former (1)(e) that read: "(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law"; in (1)(m) substituted "NMLS" for "nationwide mortgage licensing system and registry"; inserted (3), (4), and (5) regarding undisclosed fees, fees collected prior to providing services, and fees in excess of those allowed by federal law; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) inserted "mortgage servicer"; in (1)(d) after "third party" substituted "within 30 days after recording of the loan closing documents or within 90 days" for "later than 30 days after recording of the loan closing documents or 90 days"; inserted (1)(j) relating to accounting for or delivery of funds, documents, or other valuables; inserted (1)(k) relating to investigation or examination of books and records; inserted (1)(l) relating to destruction of records and information; deleted former (2) that read: "(2) A mortgage lender may not do any of the following:

(a) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(b) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

(i) direct deposit to a borrower's account;
(ii) wire;
(iii) bank or certified check;
(iv) attorney's check drawn on a trust account; or
(v) other form as specifically authorized by applicable law;

(c) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(d) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(e) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;

(f) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(g) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(h) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or

(i) falsely advertise or misuse names in violation of 18 U.S.C. 709"; in (2) substituted current language regarding written disclosure for former language that read: "Prior to providing residential mortgage services to a borrower, the mortgage loan originator working for a mortgage broker, in addition to other disclosures required by this part, subsection (3), and other state and federal laws, shall provide to the borrower a written disclosure containing substantially the following language, which must be signed by the borrower:

"MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a licensed mortgage loan originator in Montana authorized to provide mortgage loan origination services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

(1) (name of licensee) is acting as an independent contractor and not as your agent;

(2) (name of licensee) enters into separate independent contractor agreements with various lenders; and

(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

SECTION 2. OUR COMPENSATION.

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure""; deleted former (4) and (5) that read: "(4) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or mortgage loan originator is licensed as well as other legally available information.

(5) The disclosure must include the state license number and the unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage loan originator"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 in (1) and in (1)(g) after "broker" inserted "mortgage lender" and before "loan originator" inserted "mortgage"; in (1)(b) before "lender" inserted "mortgage"; inserted (1)(h) concerning aiding or abetting person without valid license; inserted (1)(i) concerning failure to comply with part or rules; inserted (1)(j) concerning false statements or omissions of material facts; inserted (2) concerning restrictions on actions of mortgage lender; in (3) near beginning substituted "residential mortgage services" for "mortgage broker services", substituted "mortgage loan originator working for a mortgage broker" for "licensee", and after "borrower" deleted "at the time of application" and in first sentence of form substituted "loan originator" for "broker" and "loan origination" for "brokerage"; in (4) near end before "loan originator" inserted "mortgage"; inserted (5) concerning disclosure containing license number and unique identifier; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 inserted (1)(e) relating to undisclosed fees, (1)(f) relating to excess fees, and (1)(g) relating to signing of documents; in (2) near middle inserted "subsection (3) of this section"; inserted (3) relating to providing information about the division of banking and financial institutions; and made minor changes in style. Amendment effective October 1, 2007.

Federal Statute: Title V of the Housing and Economic Recovery Act, referred to in this section, is compiled in the United States Code as Title 12, sec. 5101, et seq.

32-9-126. Revocation, suspension, conditioning, and reinstatement of licenses.

Compiler's Comments

2013 Amendment: Chapter 125 in (1) near middle substituted "14 days'" for "10 days'" and at end inserted "or any rule adopted under this part". Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) near beginning inserted "mortgage servicer"; deleted former (2) that read: "(2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued"; inserted (2) requiring summary suspension of license for refusal to make documents and records available upon request; in (4) after "suspended license" substituted current language relating to requirements for reinstatement of suspended license for former language that read: "if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license"; inserted (6) allowing department to refuse acceptance of offer to surrender license; inserted (7) relating to continuing obligations after revocation, suspension, or surrender of license; inserted (8) requiring department to retain fees after revocation, suspension, or surrender of license; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 in (1) near beginning before "licensee" inserted "mortgage broker, mortgage lender, or mortgage loan originator" and in two places after reference to suspension inserted reference to conditioning; in (4) near beginning after "suspended" deleted "or revoked" and deleted former second sentence that read: "If a license has been revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation"; inserted (5) concerning vacating a revocation; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 inserted (2) relating to mailing certain items; inserted (3) relating to civil and criminal liability of licensee; in (4) at end substituted "if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. If a license has been revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation" for "upon a showing that the licensee has corrected all deficiencies"; and made minor changes in style. Amendment effective October 1, 2007.

32-9-128. Registration and registered agent of foreign entities — service of process — venue.

Compiler's Comments

2019 Amendment: Chapter 65 in (3) after "service of process upon" substituted "sending by common courier with tracking capability" for "mailing by certified mail". Amendment effective October 1, 2019.

2011 Amendment: Chapter 317 deleted former (1) and (2) that read: "(1) An applicant for a mortgage broker, mortgage lender, or mortgage loan originator license under 32-9-113 who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of receiving service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors, executor, or administrator that is based on an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.

(2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:

(a) notice of the service and a copy of the process are sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court allows"; inserted (1) requiring registration; inserted (2) requiring information for registered agent for service of process; inserted (3) setting terms for compliance by department with notice requirements; deleted former (4) that read: "(4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which the license was issued or, in the case of an unlicensed person, at the last-known address of the person"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-129. Loan processors and underwriters.

Compiler's Comments

2015 Amendment: Chapter 24 after "communication" deleted "including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items"; deleted former (2) and (3) that read: "(2) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in this state unless the individual first registers as a mortgage loan originator through and obtains a unique identifier from the NMLS and obtains and maintains a valid mortgage loan originator license.

(3) For purposes of this section, "residential mortgage loan origination activities" means all activities related to residential mortgage loans from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 in (1) after "engaging" deleted "solely" and at end substituted "activities of a mortgage loan originator" for "activities pertaining to originating a residential mortgage loan"; in (2) substituted current language regarding an independent contractor acting as a loan processor or underwriter for former language that read: "A loan processor or underwriter who is an independent contractor may not engage in mortgage loan originator activities as a loan processor or underwriter unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry"; inserted (3) providing definition; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (2) in first sentence inserted "as a loan processor or underwriter". Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-130. Department authority — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 4, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 65 inserted (3) relating to department rulemaking for mortgage servicer capital requirements in 32-9-171 and supervisory requirements for designated managers; in (5)(a) after "examine any licensee" inserted "service provider"; in (5)(b) in two places after "commissioner" inserted "of banking and financial institutions"; in (6) at beginning after "Each licensee" inserted "service provider" and near middle after "independent contractors" inserted "service providers"; in (8)(b) after "be paid by the licensee" inserted "service provider"; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 24 deleted former (2)(d) that read: "(d) prescribing forms for applications"; deleted former (10) and (11) that read: "(10) (a) The department may, if the U.S. consumer financial protection bureau determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the NMLS.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. consumer financial protection bureau legislation to address the incompatibility with federal law. The provisions that the U.S. consumer financial protection bureau determines to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation.

(11) The department may be approved by the NMLS as a provider of educational courses. If the department chooses to become an approved provider of educational courses, it may charge fees to attendees. The amount of the fees must be set by rule and must be commensurate with the total course costs, including the costs of becoming an approved provider. All fees collected under

this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of presenting education courses"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 in (1) at end substituted "enforceable as provided under this part" for "enforceable through the power of suspension or revocation of licenses"; in (8)(a)(i) substituted "attorney general's consumer protection office" for "consumer protection office of the department"; in (9)(b), (9)(c), (9)(d), (10)(a), and (11) substituted "NMLS" for "nationwide mortgage licensing system and registry"; in (10)(a) and in two places in (10)(b) substituted "consumer financial protection bureau" for "department of housing and urban development"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (8)(b)(i) at end after "obtained under" substituted "this part" for "this section" and inserted language regarding confidentiality agreements; in (8)(b)(iv) at end after "this state" inserted language regarding loss of privileges or protections; deleted former (9) that read: "(9) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and mortgage lender and a roster of all mortgage loan originators and designated managers and the name of their employing mortgage brokers or employing mortgage lenders. The roster must be available to interested persons and to the general public"; inserted (11) relating to approval of department as provider of educational courses; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 inserted (2)(c)(i) concerning informing of right to contest decision; deleted former (2)(e) and (2)(f) that read: "(e) developing or approving tests to be given as a prerequisite for licensure;

(f) approval of programs for continuing education"; in (2)(e) after "fees for" deleted "testing, continuing education programs, and"; deleted former (4) that read: "(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of $300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked"; inserted (4) concerning investigating violations or complaints; inserted (5) concerning making documents and records available; inserted (6) concerning investigations and examinations; inserted (7) concerning cost of examination or investigation; inserted (8)(b) concerning powers department may exercise in carrying out section; in (8)(c) inserted reference to 32-9-160; in (9) in first sentence after "broker" inserted "and mortgage lender", before "loan originator" inserted "mortgage", before "brokers" inserted "mortgage", and after "brokers" inserted "or employing mortgage lenders"; inserted (10) concerning department authority under specified federal laws; inserted (11) concerning department's permissive authority under federal law and proposed legislation to address incompatibility with federal law; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 in (2)(b) near middle inserted "unlicensed persons alleged to have violated a provision of this part"; inserted (2)(c) relating to administrative procedures; inserted (5)(a)(iii) relating to referring matters to law enforcement agencies; in (6) inserted last sentence requiring the roster to be publicly available; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 136 in (5)(a)(i) after "federal" inserted "and state"; inserted (5)(a)(ii) authorizing department to exchange nonconfidential information with mortgage asset research institute and similar organizations; and made minor changes in style. Amendment effective October 1, 2005.

Federal Statute: Title V of the Housing and Economic Recovery Act, referred to in this section, is compiled in the United States Code as Title 12, sec. 5101, et seq.

32-9-133. Penalties — restitution.

Compiler's Comments

2019 Amendment: Chapter 65 in (1) near beginning after "any person, licensee" inserted "service provider"; in (2)(c) after "directly or through" inserted "a service provider"; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 125 in (1) near beginning substituted "14-day" for "10-day"; in (2)(a) after "restitution" deleted "to borrowers and"; in (2)(b) after "action" deleted "in addition, the department may issue an order"; in (3) substituted current language regarding liability of persons committing violations for former language that read: "(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record"; deleted former (5) that read: "(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than $250 or more than $1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (2) and (5) inserted "mortgage servicer"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 321 in (2) near middle after "revoking" inserted "conditioning" and at end substituted "mortgage lender, or mortgage loan origination business" for "business"; in (4) at end substituted "department's account in the state special revenue fund and used to administer the provisions of this part" for "state general fund"; in (5) in first sentence after "broker" inserted "mortgage lender" and before "loan originator" inserted "mortgage"; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

2007 Amendment: Chapter 498 deleted former (1) through (3) that read: "(1) A person who acts or offers to act in any capacity as a mortgage broker or loan originator without a license in this state or while a license is suspended or revoked is subject to the penalty provisions of subsections (3) and (5).

(2) Any person who violates a provision of this part or a rule adopted under this part is subject to the penalty provisions of subsection (3).

(3) For a first violation of subsection (1) or (2), the department may impose a fine of not less than $5,000 or more than $10,000. For a second or subsequent violation, the department may impose a fine of not less than $10,000 or more than $20,000. Each violation of the provisions of subsection (1) or (2) constitutes a separate offense"; inserted (1) relating to the imposition of a civil penalty; inserted (2) relating to restitution, reimbursement, and revocation of right to conduct business in the state; inserted (3) relating to mailing certain items; in (5) at beginning inserted "In addition to the penalties in subsection (1)"; and made minor changes in style. Amendment effective October 1, 2007.

32-9-134. License renewal — rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2013.

32-9-135. Independent contractor entity — responsible individual — loan processor or underwriter.

Compiler's Comments

Effective Date: Section 18, Ch. 24, L. 2015, provided that this section is effective October 1, 2015.

32-9-141. Investigations by department — subpoenas — oaths — examination of witnesses and evidence.

Compiler's Comments

2019 Amendment: Chapter 65 in (1) after "all licensees" inserted "and their service providers". Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2007.

32-9-142. Cease and desist orders.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

32-9-145. Escrow fund.

Compiler's Comments

2011 Amendment: Chapter 317 in (1) in two places inserted "or mortgage servicer". Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-148. Disclosure of mortgage costs by mortgage lender.

Compiler's Comments

2011 Amendment: Chapter 317 in (1) at beginning deleted "Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower" and after "Real Estate Settlement Procedures Act" inserted "of 1974"; in (2) deleted former second sentence that read "If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer" and inserted second sentence requiring compliance with federal laws regarding prepayment penalties. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-149. Use of name — advertising.

Compiler's Comments

2019 Amendment: Chapter 65 inserted (3) relating to rules to define false, deceptive, or misleading advertising; inserted (5) relating to rules to establish requirements for licensee advertising using the internet or any electronic format; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2013.

32-9-150. Unique identifier for mortgage brokers, mortgage lenders, mortgage servicers, mortgage loan originators, and registered mortgage loan originators.

Compiler's Comments

2013 Amendment: Chapter 125 in (2) substituted "NMLS" for "nationwide mortgage licensing system and registry". Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) in two places inserted reference to mortgage servicer; in (2) after "shall" substituted current language requiring link on department's website for former language that read: "post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers, mortgage lenders, and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry"; deleted former (3) that read: "(3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-151. Mortgage call reports.

Compiler's Comments

2013 Amendment: Chapter 125 in two places in (1) and in (2) substituted "NMLS" for "nationwide mortgage licensing system and registry". Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (1) at beginning substituted "Each licensee" for "Each mortgage broker and mortgage lender entity"; inserted (2) requiring report of all closings in report of conditions; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-152. Electronic record as original document.

Compiler's Comments

Effective Date: This section is effective October 1, 2013.

32-9-155. Nationwide mortgage licensing system information challenge process.

Compiler's Comments

2013 Amendment: Chapter 125 inserted "mortgage servicers" and substituted "NMLS" for "nationwide mortgage licensing system and registry". Amendment effective October 1, 2013.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

32-9-160. Confidentiality.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 4, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 65 inserted (2) concerning disclosure of licensee information about a service provider of the licensee; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 125 in (1)(a) in two places, in (3)(b), and in (6) substituted "NMLS" for "nationwide mortgage licensing system and registry"; in (1)(b) after "federal" substituted "financial services regulatory agencies" for "regulatory officials with mortgage industry oversight authority"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 317 in (5) in first sentence after "papers are confidential" substituted remainder of subsection for "subject to the licensee's and any uninvolved person's reasonable expectation of privacy and, although filed with the department as provided in this part, are not subject to public inspection"; in (6) inserted "mortgage servicers"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 36, Ch. 321, L. 2009, was a severability clause.

Effective Date: Section 38, Ch. 321, L. 2009, provided: "[This act] is effective July 1, 2009."

Federal Statute: Title V of the Housing and Economic Recovery Act, referred to in this section, is compiled in the United States Code as Title 12, sec. 5101, et seq.

32-9-165. Types of licenses.

Compiler's Comments

2013 Amendment: Chapter 125 deleted former (3) that read: "(3) A licensee-owned mortgage broker license may be issued to an entity that meets the requirements of subsection (2) and is owned by a Montana-licensed mortgage loan originator"; inserted (6), (7), and (8) regarding de novo licenses; and made minor changes in style. Amendment effective October 1, 2013.

Effective Date: This section is effective October 1, 2011.

32-9-166. Reports.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 4, L. 2023. Amendment effective July 1, 2023.

2015 Amendment: Chapter 24 in (1) after "department" inserted "through the NMLS"; and in (3) in introductory clause after "department" inserted "through the NMLS". Amendment effective October 1, 2015.

Effective Date: This section is effective October 1, 2011.

32-9-167. Change of control.

Compiler's Comments

2013 Amendment: Chapter 125 in (1) substituted "NMLS" for "nationwide mortgage licensing system". Amendment effective October 1, 2013.

Effective Date: This section is effective October 1, 2011.

32-9-168. Mortgage lender prohibitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

32-9-169. Mortgage servicer prohibitions.

Compiler's Comments

2017 Amendment: Chapter 275 in (6) near middle after "negative consequences" inserted "do not". Amendment effective October 1, 2017.

2015 Amendment: Chapter 24 in (2) after "laws" inserted "rules". Amendment effective October 1, 2015.

Effective Date: This section is effective October 1, 2011.

32-9-170. Mortgage servicer duties.

Compiler's Comments

2019 Amendment: Chapter 65 in (5) near middle after "mortgage servicer's application" deleted "and renewal" and at end substituted "as often as the schedule of costs and fees is amended" for "from time to time"; in (7) after "disclose" deleted "to the borrower"; deleted former (7)(b) that read: "(b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities, which may not exceed those reported to the department"; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 24 inserted (4) concerning compliance with servicing standards; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 125 in introductory clause after "imposed by" substituted "federal law or regulations" for "other statutes"; in (5) near beginning after "format" substituted "set forth by the department by rule" for "acceptable to the department" and after "state" deleted "including"; deleted former (5)(a) through (5)(e) that read: "(a) the number of mortgage loans the mortgage servicer is servicing;

(b) the type and characteristics of the loans in this state;

(c) the number of serviced loans in default, along with the breakdown of 30-day, 60-day, and 90-day delinquencies;

(d) information on loss mitigation activities, including details on workout arrangements undertaken; and

(e) information on foreclosures in this state"; deleted former (6)(c) that read: "(c) a notice in the form and content acceptable to the department that the mortgage servicer is licensed in Montana and that complaints about the mortgage servicer may be submitted to the department"; and made minor changes in style. Amendment effective October 1, 2013.

Effective Date: This section is effective October 1, 2011.

Case Notes

Mortgage Servicer's Behavior May Result in Fiduciary Duty Toward Debtor: Although the relationship between a bank and a mortgage customer generally does not give rise to fiduciary responsibilities, if a mortgage servicer goes beyond the ordinary role of a lender of money and actively advises a mortgage customer beyond the customary debtor-creditor relationship, the servicer may owe the customer a fiduciary duty. Morrow v. Bank of America, N.A., 2014 MT 117, 375 Mont. 38, 324 P.3d 1167, distinguished in House v. U.S. Bank Nat'l Ass'n, 2021 MT 45, 403 Mont. 287, 481 P.3d 820.

32-9-172. Mortgage lender net worth requirement.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

32-9-173. Requirements for remote work.

Compiler's Comments

Effective Date: Section 17, Ch. 4, L. 2023, provided: "[This act] is effective July 1, 2023."

Part 2
Nonbank Mortgage Servicers

Part Compiler's Comments

Effective Date: Section 17, Ch. 4, L. 2023, provided: "[This act] is effective July 1, 2023."

TITLE 33
INSURANCE AND INSURANCE COMPANIES

CHAPTER 1
ADMINISTRATION AND GENERAL PROVISIONS

Chapter Compiler's Comments

Severability: Section 18, Ch. 286, L. 1959, was a severability clause.

Savings Clause Not Codified: Section 40-2615, R.C.M. 1947 (sec. 15, Ch. 286, L. 1959), a savings clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 15, Ch. 286, L. 1959.

Chapter Law Review Articles

Montana's Comprehensive New Insurance Law, Williams, 22 Mont. L. Rev. 1 (1960).

Part 1
General Provisions

33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts.

Compiler's Comments

2023 Amendments — Composite Section: Section 5, Ch. 525, L. 2023, in (10) at end inserted "governed by Title 30, chapter 14, part 13"; deleted former (10)(b) (see sec. 5, Ch. 525, L. 2023, for former text); in (14) at end inserted "or to vehicle theft protection products or vehicle theft protection product warranties that are governed by Title 30, chapter 14, part 13"; and made minor changes in style. Amendment effective October 1, 2023.

Section 2, Ch. 546, L. 2023, inserted (17) concerning application to regulatory sandbox waivers. Amendment effective October 1, 2023, and terminates July 30, 2029.

Severability: Section 4, Ch. 546, L. 2023, was a severability clause.

2021 Amendments — Composite Section — Code Commissioner Correction: Chapter 262 inserted (15) exempting direct patient care agreements established pursuant to 50-4-107. Amendment effective October 1, 2021.

Chapter 262 in (15) referred to "[section 1]". However, the apparent intent of the original bill was to refer to sec. 2, Ch. 262, and the Code Commissioner has changed the final statutory reference in (15) accordingly.

Chapter 422 inserted (16) concerning a health care sharing ministry. Amendment effective October 1, 2021.

2017 Amendment: Chapter 210 in (13) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 20, 2017.

Applicability: Section 14, Ch. 210, L. 2017, provided that this section is applicable to private air ambulance membership agreements sold, solicited, or negotiated on or after April 20, 2017, for purposes of out-of-network coverage of out-of-pocket expenses in excess of deductibles, copays, and coinsurance.

Severability: Section 13, Ch. 210, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 229 in (9)(a) substituted "chapters 22 and 28" for "chapter 22". Amendment effective April 10, 2015.

Chapter 320 in (5) substituted "part 21" for "parts 21 and 23". Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

2013 Amendments — Composite Section: Chapter 313 inserted (14) regarding guaranteed asset protection waivers. Amendment effective April 26, 2013.

Chapter 363 in (4) and (12) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 30, 2013, and terminates December 31, 2017.

Applicability: Section 11, Ch. 313, L. 2013, provided: "[This act] applies to guaranteed asset protection waivers issued on or after October 1, 2013."

2011 Amendments — Composite Section: Chapter 54 in (7) at beginning deleted "Except as otherwise provided in Title 33, chapter 22" and at end inserted "or the Montana university system group benefits plans established in Title 20, chapter 25, part 13"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 199 inserted (12) exempting a self-insured student health plan from the insurance code. Amendment effective October 1, 2011.

Chapter 237 inserted (13) relating to membership subscriptions for private air ambulance service. Amendment effective April 20, 2011.

Chapter 351 in (4) near beginning after "does not apply to health maintenance organizations" deleted "or to managed care community networks, as defined in 53-6-702" and after "governed by chapter 31" deleted "or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6"; and made minor changes in style. Amendment effective May 6, 2011.

Preamble: The preamble attached to Ch. 237, L. 2011, provided: "WHEREAS, consumer expenses associated with life saving air ambulance service can be substantial and only a portion of the costs are typically eligible to be paid by insurers, leaving significant costs to the patient; and

WHEREAS, air ambulance service membership programs implemented in other states have provided protection to consumers from substantial out-of-pocket expenses for air ambulance services; and

WHEREAS, the Legislature believes it is appropriate to allow Montana consumers a choice on whether they want to participate in air ambulance service membership programs as a means to offset the costs of air ambulance services, while supporting the continued availability of these services in their communities."

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

2009 Amendment: Chapter 359 in (7), (9)(a), and (9)(b) at beginning inserted exception clause; and made minor changes in style. Amendment effective January 1, 2010.

Saving Clause: Section 7, Ch. 359, L. 2009, was a saving clause.

Applicability: Section 9, Ch. 359, L. 2009, provided: "[This act] applies to contracts or policies issued or renewed on or after [the effective date of this act]." Effective January 1, 2010.

2001 Amendments — Composite Section: Chapter 13 inserted (11)(a) exempting local government ambulance service from the insurance code; and inserted (11)(b) including nongovernmental ambulance service insurance in the insurance code. Amendment effective February 14, 2001.

Chapter 227 inserted (10) defining a service contract and providing that the insurance code does not apply to a service contract. Amendment effective October 1, 2001.

1999 Amendment: Chapter 577 in (4) inserted second sentence outlining department's responsibilities; and substituted (6) allowing limitation of services for former text that read: "(6) This code does not apply to the functions performed by a managed care contractor providing mental health services under the Montana medicaid program as established in Title 53, chapter 6." Amendment effective May 6, 1999.

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

1995 Amendments: Chapter 502 in (4) inserted "or to managed care community networks, as defined in 53-6-702", before "by chapter" substituted "governed" for "authorized", and at end inserted "or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7". Amendment effective July 1, 1995.

Chapter 590 in (1), after "Montana or", inserted "a business"; and inserted (6) concerning nonapplicability to managed care contractors.

1991 Amendment: Made minor changes in style. Amendment effective July 1, 1991.

1990 Special Session Amendment: Near end of (5) inserted reference to Title 39, ch. 71, part 23; and made minor change in grammar. Amendment effective July 1, 1990.

1989 Amendment: In (5) deleted reference to Title 39, ch. 71, part 23. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

1987 Amendments: Chapter 457 inserted (4) referring to health maintenance organizations.

Chapter 502 inserted (5) referring to workers' compensation insurance programs; inserted (6) referring to state employee group insurance program; inserted (7) referring to state self-insurance fund; and inserted (8) referring to political subdivision insurance.

Chapter 558 in first sentence of (3) substituted "applies" for "shall not apply", after "corporations" substituted "as prescribed in 33-30-102" for "to the extent that", in second sentence, after "existence", deleted "and operations", and after "corporations" substituted "is governed" for "are authorized". Amendment effective January 1, 1988.

Case Notes

Conflict Between Workers' Compensation Statute and Administrative Rule — Fiscal Health Not Justification for Discrimination: Under 33-22-111, a workers' compensation claimant is entitled to freedom of choice in selecting a treating physician, but under ARM 24.29.1511 (now repealed), an injured worker cannot change physicians without the approval of the State Fund. The Workers' Compensation Court correctly found that pursuant to this section, the freedom of choice under 33-22-111 is not extended to workers' compensation cases. However, in reality, the exemption extends to cases involving coverage by the State Fund under Plan No. 1 or 3 but not to workers covered under Plan No. 2. The State Fund argued that the differentiation did not present an equal protection problem because the disparate treatment was rationally related to the legitimate governmental goal of controlling workers' compensation costs. The Supreme Court found that the policy of discriminating among injured workers based solely on which insurance plan supplied coverage was an equal protection violation because it was not rationally related to a legitimate government objective. Offering services to some while excluding others always results in lower costs, but cost control alone does not justify disparate treatment that violates an individual's right to equal protection of the law. Discrimination is not allowed merely for the sake of fiscal health. Heisler v. Hines Motor Co., 282 M 270, 937 P2d 45, 54 St. Rep. 345 (1997), distinguishing Stratemeyer v. Lincoln County, 259 M 147, 855 P2d 506 (1993), and Chiropractors for Justice v. Alaska, 895 P2d 962 (Alaska 1995).

Attorney General's Opinions

Health Service Corporations Versus Insurance Companies: Blue Cross and Blue Shield were nonprofit corporations pursuant to section 15-1401, R.C.M. 1947 (since repealed), and its successor provisions and operated nonprofit plans as set forth in 33-30-101. Therefore, they were not health insurance corporations under the Insurance Code but rather were a special legislative creation, health service corporations, exempt from the Insurance Code. (See Ch. 558, L. 1987.) 37 A.G. Op. 151 (1978).

Debt Cancellation Contract — Subject to Insurance Code: A national bank that enters into a debt cancellation contract whereby the balance of a loan is canceled on the debtor's death must qualify and comply with the applicable provisions of this title. 31 A.G. Op. 6 (1965).

33-1-110. Limitations of provider agreements.

Compiler's Comments

Severability: Section 3, Ch. 420, L. 2013, was a severability clause.

Effective Date: Section 4, Ch. 420, L. 2013, provided: "[This act] is effective on passage and approval." Chapter 420, L. 2013, was enacted into law without the governor's signature on May 6, 2013.

33-1-111. Eligibility requirements of health insurance issuers.

Compiler's Comments

2009 Amendment: Chapter 2 in (2)(a) and (2)(b) substituted "claim by the department of public health and human services" for "department claim". Amendment effective October 1, 2009.

Effective Date: Section 4, Ch. 249, L. 2007, provided: "[This act] is effective July 1, 2007."

33-1-115. Operation of state fund as authorized insurer — issuance of certificate of authority — exceptions — use of calendar year — risk-based capital — reporting requirements.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 65, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Transition: Section 23, Ch. 320, L. 2015, provided: "As part of the documentation required in [section 1(2)(b)] [33-1-115(2)(b) and 39-71-2375(2)(b)], the state fund provided for in 39-71-2313 shall develop and submit to the insurance commissioner a transition plan to fully implement the designated advisory organization's requirements applicable under Title 33, chapter 16, part 10, to the state fund. The plan must be submitted no later than January 1, 2016. The state fund and the insurance commissioner shall provide periodic updates to the economic affairs interim committee."

Effective Date — Applicability: Section 25, Ch. 320, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to rates that are effective on or after July 1, 2016, for new and renewal policies."

Part 2

Definitions and Insurance Coverages

33-1-201. Definitions — insurance in general — general terms.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2021 Amendments — Composite Section — Code Commissioner Correction: Chapter 262 in definition of insurance inserted (b)(ii) exempting direct patient care agreements established pursuant to 50-4-107; and made minor changes in style. Amendment effective October 1, 2021. Chapter 262 in (5)(b)(ii) referred to "[section 1]". However, the apparent intent of the original bill was to refer to sec. 2, Ch. 262, and the Code Commissioner has changed the final statutory reference in (5)(b)(ii) accordingly.

Chapter 422 in definition of insurance inserted (b)(iii) and in definition of insurer inserted (b) concerning health care sharing ministry; and made minor changes in style. Amendment effective October 1, 2021.

2007 Amendment: Chapter 399 in definition of authorized insurer after "authorized by" deleted "subsisting"; in definition of resident domestic insurer in (a) and (b) substituted "individuals" for "natural persons"; in definition of unauthorized insurer after "authorized by" deleted "subsisting"; and made minor changes in style. Amendment effective May 3, 2007.

1989 Amendment: Inserted (5)(b) to exclude telecommunication contracts from the definition of insurance; and made minor change in phraseology. Amendment effective March 27, 1989.

Source: The 1989 amendment to 33-1-201 by sec. 1, Ch. 341, L. 1989, excluding telecommunications contracts from the definition of insurance, was based on Oregon Revised Statutes § 731.102 (1987).

1987 Amendment: In (6) inserted last sentence referring to health service corporation. Amendment effective January 1, 1988.

1983 Amendment: Inserted (7) defining resident domestic insurer.

Case Notes

Health Service Corporations Not Subject to Physician Liens: In 1987, the Legislature amended the insurance code to include health service corporations. The plaintiff sent a lien notice to the defendant that was ignored by the defendant, and the insurance proceeds were paid directly to the patient. The lower court ruled that the 1987 amendment to the insurance code made health service corporations subject to the physician lien statutes. The Supreme Court reversed, stating that the Legislature did not specifically state that it was subjecting health service corporations to the lien statutes and that therefore the Supreme Court would not presume that intention. (See 1991 amendment to 71-3-1113.) Anesthesiology, P.C. v. Blue Cross & Blue Shield, 246 M 277, 806 P2d 16, 47 St. Rep. 2015 (1990).

33-1-202. Definitions — entities.

Compiler's Comments

1983 Amendment: Inserted (4) defining resident of this state.

Case Notes

Associations: Section 40-1301, R.C.M. 1947 (since repealed), expressly authorizing unincorporated associations organized under the laws of the United States, or any of its states or territories, to engage in the insurance business in Montana, was a special statute and such associations were, therefore, unaffected by the general one (27-28-101), providing that a civil action may be brought in the name of the State against an association which acts as a corporation without being legally incorporated. State ex rel. Intermtn. Lloyds v. Porter, 88 M 347, 294 P 363 (1930).

33-1-205. Definitions of kinds of insurance not mutually exclusive.

Case Notes

Accidental Death Coverage Considered Life Insurance for Purposes of Conversion Rights: Golt worked as a civilian employee of the Army and Air Force Exchange Service (AAFES) until he was discharged from employment in 1994 for cause. Thirty days after termination, Golt died of carbon monoxide poisoning. As a benefit of employment, Golt was covered by an accident insurance policy issued by General American Life Insurance Company (General), which provided that if he died while covered by the policy, his estate was eligible to receive $200,000. The policy also provided that coverage would terminate on the first premium due date after Golt ceased to be an employee, which in this case was 6 days after Golt was terminated from employment. The General policy also allowed the group accident policy to be converted to an individual policy within 31 days of discharge upon written application and payment of the first premium. In addition to the General policy, Golt was also insured by Aetna Life Insurance Company (Aetna) under a group life and accident and health insurance policy, which provided a life insurance benefit of $32,000 if Golt died from any cause while insured, plus an accidental death benefit of $32,000 in the event of Golt's accidental death. The Aetna policy provided that coverage ceased upon termination of employment, but allowed the group life insurance policy to be converted to individual life insurance within 31 days of discharge and provided that if Golt died during that period, benefits would be payable. AAFES transmitted the Aetna claim, which paid $32,000 under the life insurance provisions but denied the claim for accidental death benefits on grounds that the coverage ended when employment was terminated. AAFES did not transmit the General claim. A subsequent request for benefits from General was denied because the claim was not submitted within 20 days after the covered loss occurred. Golt's wife commenced an action in 1996 in federal court, seeking accidental death benefits from both Aetna and General. The federal District Court concluded that there was no coverage under either policy and entered final judgment in favor of the insurers. In 1999, the Supreme Court agreed to address three questions certified by the Ninth Circuit Court of Appeals pursuant to former Rule 44, M.R.App.P. (now superseded), regarding the Montana statutory definitions of life insurance for purposes of determining an insured's conversions rights. The Supreme Court held that under this section, an insurance coverage may come within the definition of two kinds of insurance. Therefore, although accidental death coverage is disability insurance, for purposes of conversion rights, it is also life insurance as defined in 33-1-208. As life insurance, accidental death coverage is subject to a 31-day conversion right upon termination of coverage pursuant to 33-20-1209 and, in the event of death within the 31-day conversion period, is subject to automatic conversion under 33-20-1211. With regard to Golt's policies, the accidental death policy remained in effect, even when Golt died during the 31-day grace period without exercising the right to convert the policy by making application and paying the first premium. Golt v. Aetna Life Ins. Co., 2000 MT 155, 300 M 142, 2 P3d 841, 57 St. Rep. 613 (2000).

Annuity Contract Considered Investment, Not Life Insurance: Miles invested $30,000 in a tax-deferred variable annuity contract. After Mile's death, the plaintiffs demanded one-half of the annuity investment on grounds that the annuity was life insurance that they were entitled to under Miles' will. The District Court denied their demand, holding that the annuity contract did not constitute insurance under Montana law. On appeal, the heirs cited In re Fligman's Estate, 113 M 505, 129 P2d 627 (1942), for the proposition that because annuity contracts were considered insurance for inheritance tax purposes in that case, it followed that annuity contracts have to be considered insurance for all purposes. The Supreme Court held that because the annuity contract in Miles' case did not involve indemnification, loss, damage, liability, or contingent events, it was an investment, not insurance, and the District Court did not err in so holding. In re Estate of Miles v. Miles, 2000 MT 41, 298 M 312, 994 P2d 1139, 57 St. Rep. 191 (2000).

Statutory Interpretation: This section does not allow one to simply categorize an accidental death policy as either a life insurance or disability policy; rather, the section reflects that the

Legislature, cognizant of the fact that a particular policy may cover a variety of risks and therefore fall within more than one statutory category, wished to ensure that such a policy would not be considered void. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

33-1-206. Casualty insurance.

Compiler's Comments

2001 Amendment: Chapter 227 in (1)(a) near middle after "repairing" deleted "cranking"; inserted (1)(n) to include mechanical breakdown insurance as casualty insurance; inserted (1)(o) to include prepaid legal insurance as casualty insurance; inserted (1)(p) to include involuntary unemployment insurance as casualty insurance; inserted (1)(q) to include gap insurance as casualty insurance; and made minor changes in style. Amendment effective October 1, 2001.

33-1-207. Disability insurance.

Compiler's Comments

2021 Amendment — Code Commissioner Correction: Chapter 262 inserted (2)(b) exempting direct patient care agreements established pursuant to 50-4-107; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 262 in (2)(b) referred to "[section 1]". However, the apparent intent of the original bill was to refer to sec. 2, Ch. 262, and the Code Commissioner has changed the final statutory reference in (2)(b) accordingly.

1995 Amendment: Chapter 379 in (1) inserted "including credit disability insurance"; in (1)(a) and (1)(b), before "expense", inserted "medical"; in (1)(a), at end, inserted "indemnity involved"; in (1)(b), after "expense", inserted "or indemnity" and at end deleted "and every insurance appertaining thereto"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Case Notes

Accidental Death Coverage Considered Life Insurance for Purposes of Conversion Rights: Golt worked as a civilian employee of the Army and Air Force Exchange Service (AAFES) until he was discharged from employment in 1994 for cause. Thirty days after termination, Golt died of carbon monoxide poisoning. As a benefit of employment, Golt was covered by an accident insurance policy issued by General American Life Insurance Company (General), which provided that if he died while covered by the policy, his estate was eligible to receive $200,000. The policy also provided that coverage would terminate on the first premium due date after Golt ceased to be an employee, which in this case was 6 days after Golt was terminated from employment. The General policy also allowed the group accident policy to be converted to an individual policy within 31 days of discharge upon written application and payment of the first premium. In addition to the General policy, Golt was also insured by Aetna Life Insurance Company (Aetna) under a group life and accident and health insurance policy, which provided a life insurance benefit of $32,000 if Golt died from any cause while insured, plus an accidental death benefit of $32,000 in the event of Golt's accidental death. The Aetna policy provided that coverage ceased upon termination of employment, but allowed the group life insurance policy to be converted to individual life insurance within 31 days of discharge and provided that if Golt died during that period, benefits would be payable. AAFES transmitted the Aetna claim, which paid $32,000 under the life insurance provisions but denied the claim for accidental death benefits on grounds that the coverage ended when employment was terminated. AAFES did not transmit the General claim. A subsequent request for benefits from General was denied because the claim was not submitted within 20 days after the covered loss occurred. Golt's wife commenced an action in 1996 in federal court, seeking accidental death benefits from both Aetna and General. The federal District Court concluded that there was no coverage under either policy and entered final judgment in favor of the insurers. In 1999, the Supreme Court agreed to address three questions certified by the Ninth Circuit Court of Appeals pursuant to former Rule 44, M.R.App.P. (now superseded), regarding the Montana statutory definitions of life insurance for purposes of determining an insured's conversions rights. The Supreme Court held that under 33-1-205, an insurance coverage may come within the definition of two kinds of insurance. Therefore, although accidental death coverage is disability insurance, for purposes of conversion rights, it is also life insurance as defined in 33-1-208. As life insurance, accidental death coverage is subject to a 31-day conversion right upon termination of coverage pursuant to 33-20-1209 and, in the event of death within the 31-day conversion period, is subject to automatic conversion under 33-20-1211. With regard to Golt's policies, the accidental death policy remained in effect, even when Golt died during the 31-day grace period without exercising the right to convert the policy by making application and paying the first premium. Golt v. Aetna Life Ins. Co., 2000 MT 155, 300 M 142, 2 P3d 841, 57 St. Rep. 613 (2000).

Car Rental Accidental Death Policy as Disability Insurance: An insurance policy providing a renter of a car with coverage for accidental death arising from operation during the rental period was classified as disability insurance under this section, rather than life insurance under 33-1-208. Therefore, an "intoxicants exclusion" in the policy was not voided by the prohibition against such exclusions as related to life insurance policies under 33-20-121. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

33-1-208. Life insurance.

Compiler's Comments

1995 Amendment: Chapter 379 near beginning inserted "including credit life insurance"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1991 Amendment: Near middle, after "disability", inserted "benefits that provide reimbursement or payment for long-term home health care or long-term care in a nursing home or other related institution".

Source: The 1991 amendment to this section is based on the definition of life insurance in Art. 48A, sec. 63, Annotated Code of Maryland, 1957.

Case Notes

Accidental Death Coverage Considered Life Insurance for Purposes of Conversion Rights: Golt worked as a civilian employee of the Army and Air Force Exchange Service (AAFES) until he was discharged from employment in 1994 for cause. Thirty days after termination, Golt died of carbon monoxide poisoning. As a benefit of employment, Golt was covered by an accident insurance policy issued by General American Life Insurance Company (General), which provided that if he died while covered by the policy, his estate was eligible to receive $200,000. The policy also provided that coverage would terminate on the first premium due date after Golt ceased to be an employee, which in this case was 6 days after Golt was terminated from employment. The General policy also allowed the group accident policy to be converted to an individual policy within 31 days of discharge upon written application and payment of the first premium. In addition to the General policy, Golt was also insured by Aetna Life Insurance Company (Aetna) under a group life and accident and health insurance policy, which provided a life insurance benefit of $32,000 if Golt died from any cause while insured, plus an accidental death benefit of $32,000 in the event of Golt's accidental death. The Aetna policy provided that coverage ceased upon termination of employment, but allowed the group life insurance policy to be converted to individual life insurance within 31 days of discharge and provided that if Golt died during that period, benefits would be payable. AAFES transmitted the Aetna claim, which paid $32,000 under the life insurance provisions but denied the claim for accidental death benefits on grounds that the coverage ended when employment was terminated. AAFES did not transmit the General claim. A subsequent request for benefits from General was denied because the claim was not submitted within 20 days after the covered loss occurred. Golt's wife commenced an action in 1996 in federal court, seeking accidental death benefits from both Aetna and General. The federal District Court concluded that there was no coverage under either policy and entered final judgment in favor of the insurers. In 1999, the Supreme Court agreed to address three questions certified by the Ninth Circuit Court of Appeals pursuant to former Rule 44, M.R.App.P. (now superseded), regarding the Montana statutory definitions of life insurance for purposes of determining an insured's conversions rights. The Supreme Court held that under 33-1-205, an insurance coverage may come within the definition of two kinds of insurance. Therefore, although accidental death coverage is disability insurance, for purposes of conversion rights, it is also life insurance as defined in this section. As life insurance, accidental death coverage is subject to a 31-day conversion right upon termination of coverage pursuant to 33-20-1209 and, in the event of death within the 31-day conversion period, is subject to automatic conversion under 33-20-1211. With regard to Golt's policies, the accidental death policy remained in effect, even when Golt died during the 31-day grace period without exercising the right to convert the policy by making application and paying the first premium. Golt v. Aetna Life Ins. Co., 2000 MT 155, 300 M 142, 2 P3d 841, 57 St. Rep. 613 (2000).

Annuity Contract Considered Investment, Not Life Insurance: Miles invested $30,000 in a tax-deferred variable annuity contract. After Mile's death, the plaintiffs demanded one-half of the annuity investment on grounds that the annuity was life insurance that they were entitled to under Miles' will. The District Court denied their demand, holding that the annuity contract did not constitute insurance under Montana law. On appeal, the heirs cited In re Fligman's Estate, 113 M 505, 129 P2d 627 (1942), for the proposition that because annuity contracts were considered insurance for inheritance tax purposes in that case, it followed that annuity contracts have to be considered insurance for all purposes. The Supreme Court held that because the annuity contract in Miles' case did not involve indemnification, loss, damage, liability, or contingent events, it was an investment, not insurance, and the District Court did not err in so holding. In re Estate of Miles v. Miles, 2000 MT 41, 298 M 312, 994 P2d 1139, 57 St. Rep. 191 (2000).

Death by Pulmonary Aspiration as Accidental Within Context of Insurance Policy: The physician who examined Caster after he died testified that Caster had aspirated food, causing respiratory arrest and then cardiac arrest, which the physician characterized as accidental based on the absence of heart problems in Caster's medical history. Caster's insurance policy provided for payment of a benefit for loss of life due to an injury, which was defined as bodily injury caused solely by an accident. However, a definition of accident was not included in the policy. The trial court adopted the definition from 46 C.J.S. Insurance 863 (1993), finding that the common understanding of the term "contemplates something unanticipated, unforeseen, and unusual, without design, intention, or premeditation". Jefferson National Life Insurance Company contended that coverage did not extend to Caster because his death was not caused solely by accident, but produced no evidence that Caster's death was anything but unanticipated, unforeseen, and unusual, without design, intention, or premeditation. The estate met its burden of proving that Caster's death by aspiration was an accidental death covered by the policy. Ike v. Jefferson Nat'l Life Ins. Co., 267 M 396, 884 P2d 471, 51 St. Rep. 1097 (1994), distinguishing Brothers v. Gen. Motors Corp., 202 M 477, 658 P2d 1108 (1983).

Intoxication Exclusion Inapplicable Absent Evidence of Influence Upon Death: Caster's life insurance policy excluded coverage if death was caused in whole or in part, directly or indirectly, from the influence of any intoxicant. Evidence was submitted that Caster had been drinking the night before he died, but the physician who examined Caster after he died testified that Caster had aspirated food, causing respiratory arrest and then cardiac arrest. The insurance company bore the burden of proving that the exclusionary clause applied, but because of a lack of substantial credible evidence that the influence of alcohol had any relationship to Caster's death, the trial court properly held that the intoxication exclusion in the policy did not apply to Caster's accidental death. Ike v. Jefferson Nat'l Life Ins. Co., 267 M 396, 884 P2d 471, 51 St. Rep. 1097 (1994).

Car Rental Accidental Death Policy as Disability Insurance: An insurance policy providing a renter of a car with coverage for accidental death arising from operation during the rental period was classified as disability insurance under 33-1-207, rather than life insurance under this section. Therefore, an "intoxicants exclusion" in the policy was not voided by the prohibition against such exclusions as related to life insurance policies under 33-20-121. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

33-1-209. Marine protection and indemnity and wet marine insurance.

Compiler's Comments

1995 Amendment: Chapter 379 substituted (1) defining marine and transportation insurance for "Marine insurance includes marine protection and indemnity insurance, meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of or incident to the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of another person"; inserted (2) defining marine protection and indemnity insurance; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1981 Amendment: Deleted subsection (1)(a) relating to marine insurance coverage in detail (for language deleted, see Sec. 78, Ch. 286, L. 1959).

33-1-210. Property insurance.

Administrative Rules

ARM 6.6.1501 through 6.6.1508 Crop hail insurance.

33-1-211. Surety insurance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-1-214. Mechanical breakdown insurance.

Compiler's Comments

2001 Amendment: Chapter 227 at end of (2) deleted "or vehicle casualty insurance, as defined in 33-1-206"; inserted (3) to include mechanical breakdown insurance as a type of casualty insurance; and made minor changes in style. Amendment effective October 1, 2001.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Effective Date: Section 73(1), Ch. 472, L. 1999, provided: "(1) Except as provided in subsections (2) and (3), [this act] [enacting this section] is effective October 1, 1999."

33-1-215. Prepaid legal insurance.

Compiler's Comments

2001 Amendment: Chapter 227 in three places substituted reference to prepaid legal insurance for reference to prepaid legal plan; inserted (3) to include prepaid legal insurance as a type of casualty insurance; and made minor changes in style. Amendment effective October 1, 2001.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Effective Date: Section 73(2), Ch. 472, L. 1999, provided: "(2) [Sections 1 through 4, 31, 66 [enacting this section], and 70 through 72 and this section] are effective on passage and approval." Approved April 27, 1999.

33-1-216. Involuntary unemployment insurance.

Compiler's Comments

2001 Amendment: Chapter 227 inserted (2) to include involuntary unemployment insurance as a type of casualty insurance; and made minor changes in style. Amendment effective October 1, 2001.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Effective Date: Section 73(1), Ch. 472, L. 1999, provided: "Except as provided in subsections (2) and (3), [this act] [enacting this section] is effective October 1, 1999."

33-1-217. Gap amount — gap insurance.

Compiler's Comments

2001 Amendment: Chapter 227 inserted (3) to include gap insurance as a type of casualty insurance. Amendment effective October 1, 2001.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Effective Date: Section 73(1), Ch. 472, L. 1999, provided: "Except as provided in subsections (2) and (3), [this act] [enacting this section] is effective October 1, 1999."

33-1-218. Credit insurances — definitions.

Compiler's Comments

Effective Date: Section 12(1), Ch. 106, L. 2001, provided that this section is effective October 1, 2001.

33-1-219. Mortgage insurances — definitions.

Compiler's Comments

Effective Date: Section 12(1), Ch. 106, L. 2001, provided that this section is effective October 1, 2001.

33-1-220. Rental car insurance.

Compiler's Comments

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

33-1-222. Purpose.

Compiler's Comments

Source: Section 1, Nationwide Inland Marine Definition Model Act, drafted by the National Association of Insurance Commissioners, as revised 1977.

33-1-223. Imports.

Compiler's Comments

Source: Section 2(A), Nationwide Inland Marine Definition Model Act, drafted by the National Association of Insurance Commissioners, as revised 1977.

33-1-224. Exports.

Compiler's Comments

Source: Section 2(B), Nationwide Inland Marine Definition Model Act, drafted by the National Association of Insurance Commissioners, as revised 1977.

33-1-225. Domestic shipments.

Compiler's Comments

Source: Section 2(C), Nationwide Inland Marine Definition Model Act, drafted by the National Association of Insurance Commissioners, as revised 1977.

33-1-226. Instrumentalities of transportation and commerce.

Compiler's Comments

Source: Section 2(D), Nationwide Inland Marine Definition Model Act, drafted by the National Association of Insurance Commissioners, as revised 1977.

33-1-227. Personal property.

Compiler's Comments

Source: Section 2(E), Nationwide Inland Marine Definition Model Act, drafted by the National Association of Insurance Commissioners, as revised 1977.

33-1-228. Commercial property.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 2(F), Nationwide Inland Marine Definition Model Act, drafted by the National Association of Insurance Commissioners, as revised 1977.

33-1-229. Exceptions.

Compiler's Comments

Source: Section 3, Nationwide Inland Marine Definition Model Act, drafted by the National Association of Insurance Commissioners, as revised 1977.

33-1-235. Disability income insurance.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Part 3
Commissioner and Department General Powers and Duties

Part Administrative Rules

ARM 6.1.101 Rules describing organization of State Auditor's office.

33-1-302. Commissioner's seal.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-1-303. Deputies and assistants — employment, compensation, and termination.

Compiler's Comments

1993 Amendment: Chapter 165 inserted (5) requiring Commissioner to provide analysts to ensure compliance with market regulations; and made minor changes in style.

Case Notes

No Statutory or Regulatory Authority Mandating Certified Financial Examiner Status: In either 1974 or 1990, Scanlon could have obtained certified financial examiner (CFE) status with the Society of Financial Examiners, Inc. (SOFE), but he did not meet the requirements for certification and thus failed to obtain it. Scanlon later contended that SOFE was required to grant certification by virtue of his senior examiner status. The District Court dismissed the claim by summary judgment because Scanlon had failed to meet his burden of raising a genuine issue of material fact. The Supreme Court concurred, finding no specific statutory or regulatory authority mandating that SOFE confer CFE status on senior examiners. Further, Scanlon's contention that he was deprived of a property right was merely a subjective expectancy. State ex rel. Scanlon v. Nat'l Ass'n of Ins. Comm'rs, 265 M 184, 875 P2d 340, 51 St. Rep. 480 (1994).

33-1-304. Delegation of authority — responsibility.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-1-305. Conflicts of interest prohibited.

Compiler's Comments

2019 Amendment: Chapter 62 in (1) at beginning substituted "may" for "shall"; in (2) substituted current language regarding ethics provisions for former (2) that read: "(2) The commissioner or any deputy, examiner, or employee of the commissioner shall not be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service rendered or to be rendered as such commissioner, deputy, examiner, or employee or in connection therewith"; and made minor changes in style. Amendment effective October 1, 2019.

33-1-311. General powers and duties.

Compiler's Comments

2013 Amendment: Chapter 360 in (3) inserted exception clause; in (5)(b) in two places after "federal agency" inserted "the interstate insurance product regulation commission"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 227 in (5)(b) in two places inserted "another state agency". Amendment effective April 20, 2011.

Preamble: The preamble attached to Ch. 114, L. 2011, provided: "WHEREAS, comprehensive data about the quality and cost of health care allows state policymakers to monitor the success and efficiency of efforts to reduce health care costs and improve both health care quality and population health; and

WHEREAS, comprehensive health care data can show statewide variation in care, including whether evidence-based guidelines and best-practice clinical standards are being followed and how they affect cost and quality; and

WHEREAS, access to comparative data can help businesses to learn where they stand when compared with their peers with respect to the cost and covered services of health insurance policies; and

WHEREAS, comparative data provides consumers with information that they and their health care providers can use to make informed decisions about the effectiveness of treatments and the quality of care; and

WHEREAS, comparative data supports providers' efforts to design targeted quality improvement initiatives and to compare their own performance with that of their peers; and

WHEREAS, comprehensive health care data helps health care policymakers evaluate reform efforts and identify communities that provide cost-effective care so that successful initiatives can be identified and replicated; and

WHEREAS, other states have learned of the value of all-payer, all-claims health care databases and have implemented them to the benefit of their citizens while protecting the privacy rights of all individuals."

Preamble: The preamble attached to Ch. 338, L. 2011, provided: "WHEREAS, there are hundreds of cancer patients in Montana who are eligible to participate in clinical trials that could be beneficial to them, as well as hasten major breakthroughs in cancer treatment; and

WHEREAS, the research companies cover all costs of the clinical trials, but not the routine care (e.g., chemotherapy, etc.) a patient would have received had they not been participating in a clinical trial; and

WHEREAS, cancer patients are not participating in these clinical trials because many insurance plans exclude routine care if a patient is accepted into a clinical trial; and

WHEREAS, insurance companies and self-funded plan administrators report they have difficulty defining routine care when an insured participates in a clinical trial; and

WHEREAS, limited information exists regarding this issue for consumers of health insurance to facilitate their making an informed choice."

Review of Health Care Insurance — Advisory Council: Section 1, Ch. 114, L. 2011, required the insurance commissioner to convene an advisory council to review the costs, benefits, and procedural and technical requirements necessary to design, implement, and maintain a statewide all-payer, all-claims database for health care and to report to the children, families, health, and human services interim committee. Chapter 114 was effective July 1, 2011, and terminates December 31, 2012.

Review of Cancer Clinical Trials: Chapter 338, L. 2011, required the insurance commissioner to study the appropriate and equitable treatment of cancer patients eligible for clinical trials, convene an advisory committee, and report to the children, families, health, and human services interim committee. Chapter 338 was effective May 5, 2011, and terminates June 30, 2013, or upon completion of the duties described in the chapter, whichever occurs first.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

2007 Amendment: Chapter 399 in (5)(b) in two places after "federal agency" inserted reference to foreign government; and made minor changes in style. Amendment effective May 3, 2007.

2001 Amendment: Chapter 227 in (5)(b) near beginning after "state" inserted "or federal agency" and near middle of second sentence after "enforcement agency" inserted "a federal agency". Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 inserted (5) regarding confidentiality of information; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1995 Amendment: Chapter 379 throughout section substituted "the laws of this state" for "this code"; in (1), after "imposed", inserted "on the commissioner"; deleted former (5) that read: "(5) The commissioner has additional powers and duties as provided by other laws of this state"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 165 inserted (3) requiring administration of the Department to ensure protection of insurance consumers; and made minor changes in style.

1989 Amendment: Inserted (5) establishing Insurance Department as a criminal justice agency. Amendment effective March 15, 1989.

Case Notes

Insurance Commissioner's Action Involving Alleged Insurance Code Violations by Managing General Agent Not Precluded by Existence of Federal Lawsuit by Insurer Alleging Private Breach of Contract Claims by Managing General Agent — Commissioner's and Insurer's Interests Not Sufficiently Aligned to Grant Writ of Prohibition Based on Issue Preclusion. Victory Ins. Co. v. Downing, 2023 MT 139, 413 Mont. 80, 532 P.3d 850.

Managing General Agent Provisions Contain Two Separate Data-Access Requirements, One for Insurers and One for Insurance Commissioner — Commissioner's Action to Enforce Regulations Was Separate From Private Contract Dispute — District Court's Refusal to Grant Writ of Prohibition Against Commissioner Upheld. Victory Ins. Co. v. Downing, 2023 MT 139, 413 Mont. 80, 532 P.3d 850.

Commissioner's Action Protected by Quasi-Judicial Immunity: The plaintiff sued the Insurance Commissioner for failing to investigate his claim against an insurer who had refused to provide him with coverage. The Supreme Court held that the common-law doctrine of quasi-judicial immunity protects executive agencies when they are carrying out their discretionary functions. (See 1993 amendment.) Gerber v. Comm'r of Ins., 242 M 369, 786 P2d 1199, 47 St. Rep. 399 (1990), followed in Trout v. Bennett, 252 M 416, 830 P2d 81, 49 St. Rep. 303 (1992). Trout was followed in Orozco v. Day, 281 M 341, 934 P2d 1009, 54 St. Rep. 200 (1997).

33-1-312. Records and certificates.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-1-313. Rules.

Compiler's Comments

2001 Amendment: Chapter 227 near middle after "aid to" substituted "the effective administration" for "effectuation" and deleted former second through fifth sentences that read: "No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days"; deleted former (2) that read: "(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates"; and made minor changes in style. Amendment effective October 1, 2001.

1987 Amendments: Chapters 370 and 606 in (1), at end of first sentence, deleted "except 33-30-1012".

Administrative Rules

Title 6, chapter 2, subchapter 2, ARM Debt collections.

Title 6, chapter 6, subchapter 2, ARM Life insurance solicitation.

Title 6, chapter 6, subchapter 3, ARM Replacement of life insurance.

Title 6, chapter 6, subchapter 5, ARM Medicare supplements.

Title 6, chapter 6, subchapter 6, ARM Medicare select policies.

Title 6, chapter 6, subchapter 8, ARM Annuities.

Title 6, chapter 6, subchapter 9, ARM Military sales practices.

Title 6, chapter 6, subchapter 10, ARM Funeral insurance.

Title 6, chapter 6, subchapter 11, ARM Credit life and disability insurance.

Title 6, chapter 6, subchapter 13, ARM Proxies, consents, and authorizations of domestic stock insurers.

Title 6, chapter 6, subchapter 14, ARM Proxies, consents, and authorizations — special provisions applicable to election contests.

Title 6, chapter 6, subchapter 15, ARM Crop hail insurance.

Title 6, chapter 6, subchapter 16, ARM Public adjusters.

Title 6, chapter 6, subchapter 17, ARM Unfair trade practices.

Title 6, chapter 6, subchapter 18, ARM Standard valuation and standard nonforfeiture.

Title 6, chapter 6, subchapter 21, ARM Discrimination in insurance.

Title 6, chapter 6, subchapter 22, ARM Title insurance.

Title 6, chapter 6, subchapter 24, ARM Group coordination of benefits.

Title 6, chapter 6, subchapter 25, ARM Health maintenance organizations.

Title 6, chapter 6, subchapter 26, ARM Independent liability funds.

Title 6, chapter 6, subchapter 27, ARM Periodic payment of premium taxes.

Title 6, chapter 6, subchapter 28, ARM Surplus lines insurance transactions.

Title 6, chapter 6, subchapter 30, ARM Loss cost advisory rate filings.

Title 6, chapter 6, subchapter 31, ARM Long-term care.

Title 6, chapter 6, subchapter 33, ARM Prohibiting unfair discrimination for previously uninsured personal automobile insurance applicants.

Title 6, chapter 6, subchapter 34, ARM Companies considered to be in hazardous financial condition.

Title 6, chapter 6, subchapter 35, ARM Annual audited reports and establishing accounting practices and procedures to be used in annual statements.

Title 6, chapter 6, subchapter 36, ARM Life and health reinsurance agreements.

Title 6, chapter 6, subchapter 37, ARM Reporting by holding company systems.

Title 6, chapter 6, subchapter 38, ARM Credit for reinsurance.

Title 6, chapter 6, subchapter 40, ARM Insurer investments.

Title 6, chapter 6, subchapter 41, ARM Fee schedules.

Title 6, chapter 6, subchapter 42, ARM Continuing education program for insurance producers and consultants.

Title 6, chapter 6, subchapter 46, ARM Montana Life and Health Insurance Guaranty Association Act and notice concerning coverage limitations and exclusions.

Title 6, chapter 6, subchapter 50, ARM Small employer health insurance rules.

Title 6, chapter 6, subchapter 55, ARM Implementation of standardized health claim forms.

Title 6, chapter 6, subchapter 57, ARM Supervision, rehabilitation, and liquidation of self-funded multiple employer welfare arrangements.

Title 6, chapter 6, subchapter 65, ARM Actuarial opinion.

Title 6, chapter 6, subchapter 66, ARM Fidelity bond.

Title 6, chapter 6, subchapter 67, ARM Valuation of life insurance policies.

Title 6, chapter 6, subchapter 68, ARM Formation and regulation of captive insurance companies.

Title 6, chapter 6, subchapter 69, ARM Insurance information and privacy protection.

Title 6, chapter 6, subchapter 70, ARM Insurance standards for safeguarding personal information.

Title 6, chapter 6, subchapter 71, ARM Recognition of preferred mortality tables for use in determining minimum reserve liabilities.

Title 6, chapter 6, subchapter 85, ARM Viatical settlement agreements.

33-1-314. Orders and notices.

Compiler's Comments

Code Commissioner Correction: In (4) substituted "Rule 4(c)(2)(C), (c)(2)(D), and (d) through (s)" for "Rule 4D" to reflect revisions adopted by Supreme Court Order No. AF 07-0157 dated April 26, 2011.

2001 Amendment: Chapter 227 in (3) substituted language regarding service of process by the commissioner for former (3) that read: "(3) Except as may be provided in this code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the commissioner's office. Such order or notice shall be deemed to have been given when so mailed"; inserted (4) regarding service of process pursuant to the Montana Rules of Civil Procedure; and made minor changes in style. Amendment effective October 1, 2001.

33-1-315. Witnesses — production of records — subpoena — failure to respond.

Compiler's Comments

2003 Amendment: Chapter 493 in (2) in two places inserted "or the commissioner's designee"; inserted (5) subjecting a person who knowingly fails to provide information, records, documents, and other evidence, fails to truthfully answer, or fails to appear to 33-1-317 and 33-1-318; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

2001 Amendment: Chapter 227 in (1) in first sentence after "investigation" substituted "being conducted by the commissioner, or the commissioner's designee if general written authority has been given the designee by the commissioner, the commissioner or the designee" for "or hearing being conducted by him, the commissioner or his examiner, if general written authority has been given the examiner by the commissioner", deleted former second sentence that read: "If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner may conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered", and inserted second sentence regarding subpoenas of witnesses; inserted (2) allowing examination of officer, director, or manager out of state; inserted (3) regarding institution of proceedings to compel obedience of subpoena; in (4) at end of second sentence after "subpoenaed" deleted "or by the person, if other than the commissioner, at whose request the hearing is held"; deleted former (3) through (5) that read: "(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear. Such court shall cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

(4) Any person knowingly failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who knowingly fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or knowingly fails to appear and testify under oath before the commissioner is guilty of a misdemeanor.

(5) Any person knowingly testifying falsely under oath as to any matter material to any such examination, investigation, or hearing is guilty of perjury, and upon conviction shall be punished according to 45-7-201"; and made minor changes in style. Amendment effective October 1, 2001.

33-1-316. Testimony compelled — immunity from prosecution.

Compiler's Comments

2001 Amendment: Chapter 227 in (1) near beginning of first sentence after "investigation" deleted "or hearing"; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendment: Chapter 451 near beginning of second sentence, after "However", deleted "compelled" and after "evidence" inserted "compelled following a claim of privilege against self-incrimination", near middle of third sentence, after "person", substituted "testifies" for "is compelled to testify", near end of fourth sentence, before "testimony", deleted "the compelled" and after "evidence" inserted "given under this part"; and made minor changes in style.

1991 Amendment: Substituted second, third, and fourth sentences regarding use of compelled testimony or evidence and grant of immunity by Commissioner for former second sentence that read: "No person shall be prosecuted or punished in any criminal action or proceeding for or on account of any act, transaction, matter, or thing concerning which he is so compelled to produce evidence or to testify under oath, except for perjury committed in such testimony"; and made minor changes in style.

Applicability: Section 2, Ch. 246, L. 1991, provided: "[This act] applies to acts, occurrences, transactions, and matters that occur on or after October 1, 1991."

33-1-317. Penalty imposed by commissioner.

Compiler's Comments

1993 Amendment: Chapter 164 at end of first sentence increased fine on insurance producers or adjusters from a maximum of $500 to a maximum of $5,000 per violation; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendments: Chapter 278 near middle of first sentence increased fine to $25,000 from $5,000.

Chapters 370 and 606 near middle of first sentence, after "code", deleted "except 33-30-1012".

33-1-318. Injunctions and other remedies.

Compiler's Comments

2005 Amendment — Code Commissioner Correction: Chapter 456 in (1) near end inserted reference to part 1 of chapter 38 of this title; and made minor changes in style. Amendment effective October 1, 2005.

Pursuant to sec. 81, Ch. 130, L. 2005, in (1) near middle after "violation of" the code commissioner deleted a reference to 33-1-107 because that section was repealed by sec. 12, Ch. 456, L. 2005.

2003 Amendment: Chapter 493 in (1) in introductory clause inserted references to 33-1-107, 33-1-1302, and part 13 of chapter 20 of this title; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

Part 4
Examinations by Department

Part Case Notes

Constitutionality of Statutory Provision Allowing Withholding of Certain Reports: The District Court erred in holding that 33-1-412(5) (now repealed) was unconstitutional as establishing an area of secrecy without any showing that there is a privacy interest involved. In reversing, the Supreme Court held that the exception to public inspection was identical to and coextensive with the right-to-privacy exception to the right to know, Art. II, sec. 9, Mont. Const., and authorized the Commissioner of Insurance to make the initial decision whether the privacy rights outweigh the need for public disclosure. Belth v. Bennett, 227 M 341, 740 P2d 638, 44 St. Rep. 1133 (1987).

33-1-401. Examination of insurers.

Compiler's Comments

1993 Amendment: Chapter 596 in second sentence of (1) substituted "authorized" for "domestic" and increased frequency of examination from 3 years to 5 years and deleted third and fourth sentences that read: "Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact insofar as the transactions of the attorney-in-fact relate to the insurer"; substituted (3) regarding acceptance of another examination report and establishing conditions for acceptance for former (3) that read: "In lieu of making his own examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States"; inserted (4) allowing examination of any person or person's business when necessary to the examination of the company; and made minor changes in style.

33-1-402. Examination of insurance producers, managers, and promoters.

Compiler's Comments

2015 Amendment: Chapter 139 in (1) at end inserted "or public adjuster"; and made minor changes in style. Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: In (1) substituted "insurance producer" for "insurance agent, solicitor", substituted "surplus lines insurance producer" for "surplus lines agent", and substituted "general insurance producer" for "general agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

1987 Amendment: In (1) substituted "lines" for "line".

33-1-408. Conduct of examinations — records — correction of accounts — appraisals.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 157, L. 2023. Amendment effective April 19, 2023.

2003 Amendment: Chapter 380 at end of (2) inserted reference to 33-1-701; and made minor changes in style. Amendment effective October 1, 2003.

33-1-409. Examination reports — hearings — confidentiality — publication.

Compiler's Comments

2017 Amendment: Chapter 9 in (5)(b) near end inserted "in writing". Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendment: Chapter 63 in (5)(b) near end after "agrees" and in (6)(a) in second sentence after "agree" deleted "in writing". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2013 Amendment: Chapter 169 substituted current language in (6) defining and concerning working papers for former (6) that read: "(6) All working papers, confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an examination made under this part must be given confidential treatment, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in subsection (5). Access may also be granted to the NAIC. The persons given access to confidential criminal justice information, trade secrets, and personal information shall agree in writing, prior to receiving the information, to treat the information in the manner required by this section unless the prior written consent of the company to which it pertains has been obtained"; and made minor changes in style. Amendment effective April 9, 2013.

1999 Amendment: Chapter 416 in second sentence in (4)(b)(iii) substituted "may" for "must"; in second sentence in (5)(a) substituted "shall" for "may"; near end of (5)(b) after "hold it" deleted "confidential and"; in first sentence in (6) after "papers" substituted language regarding confidential criminal justice information, personal information, and trade secrets specifically identified and for which reasonable privilege grounds asserted for former language that read: "recorded information, documents, and copies produced by" and in third sentence after "access" inserted "to confidential criminal justice information, trade secrets, and personal information" and before "manner" deleted "confidential"; and made minor changes in style. Amendment effective October 1, 1999.

33-1-411. Destruction of records — hindrance of examination — penalty.

Compiler's Comments

1999 Amendment: Chapter 472 at end of first sentence after "fine" substituted "as provided in 33-1-317" for "of not more than $1,000"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-1-413. Examination expense — lien.

Compiler's Comments

1995 Amendment: Chapter 379 in (2) substituted "state special revenue fund" for "general fund"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Part 5
Approval of Forms

33-1-501. Filing of forms — approval — review of disapproval or withdrawal of approval — application.

Compiler's Comments

2013 Amendment: Chapter 360 in (1)(a) at end of first sentence after "domicile of insurer" inserted "or the interstate insurance product regulation commission provided for in 33-39-101". Amendment effective October 1, 2013.

2005 Amendment: Chapter 409 in (1)(a) near beginning of first sentence after "application form" deleted "viatical disclosure form"; inserted (1)(b) requiring that a filing required by subsection (1)(a) must be submitted by an officer of the insurer with a certification; in (2)(a) near beginning after "delivery" inserted "and must be delivered by hand or sent by certified mail with a return receipt requested. The commissioner's office shall mark a filing with the date of receipt by the commissioner's office"; inserted (2)(b) through (2)(d) regarding approval of a filing form; in (3) deleted former second sentence that read: "The commissioner may extend by not more than an additional 60 days the period within which the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period"; in (4) near end of second sentence after "insurer" inserted "of the specific reason or reasons for and the legal authority supporting the disapproval or withdrawal of approval in whole or in part. The disapproval or withdrawal of approval does not take effect unless it is issued after the commissioner has reviewed the form and provided notice to the person who filed the form pursuant to 33-1-314 and this subsection"; inserted (5) providing that an insurer may not deliver the form or issue the form for delivery in Montana after the date of the insurer's receipt of notice of disapproval or withdrawal of approval; inserted (6) providing for a hearing for unresolved disputes; and made minor changes in style. Amendment effective January 1, 2006.

Applicability: Section 4, Ch. 409, L. 2005, provided: "[This act] applies to all policies, forms, and certificates filed with the commissioner of insurance on or after [the effective date of this act]." Effective January 1, 2006.

2001 Amendments — Composite Section: Chapter 295 in (1)(a) in middle of first sentence inserted "viatical disclosure form"; and made minor changes in style. Amendment effective January 1, 2002.

Chapter 336 in (1)(a) near middle of first sentence after "unless the form" inserted "and, for the purposes of disability insurance, an outline of coverage as required by 33-22-244 and 33-22-521"; and made minor changes in style. Amendment effective January 1, 2002.

Saving Clause: Section 5, Ch. 336, L. 2001, was a saving clause.

Effective Date — Applicability: Section 6, Ch. 336, L. 2001, provided: "[This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date."

1995 Amendment: Chapter 379 inserted (1)(b) concerning the Commissioner's waiver of approval of certain insurance forms by the state of domicile; at beginning of (3) substituted "Notice by" for "An order of"; at end of (7) inserted sentence concerning certificates meeting minimum provisions of Montana law; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 near beginning of (1), after "contract form", inserted "certificate, enrollment form"; in (4), near beginning after "may", deleted "by order" and near middle, after "specified", deleted "in the order"; and made minor changes in style.

1989 Amendment: In (1), near beginning after "the commissioner and", inserted "the regulatory official of"; in (7), at beginning, inserted "Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance" for "As to group insurance" and near end substituted "resident in Montana must be filed" for "resident in this state, group certificates which are delivered or issued for delivery in this state shall be filed"; and made minor changes in phraseology, punctuation, grammar, and style.

Severability: Section 15, Ch. 156, L. 1989, was a severability clause.

1983 Amendment: In (1), in second sentence after "surety bonds" deleted "specially rated inland marine risks"; and inserted (7) referring to group insurance policies and certificates.

1981 Amendment: Deleted "basic" before "insurance policy" at the beginning of (1); deleted "where written application is required and is to be made a part of the policy or contract" after "application form" near the beginning of (1); added "of this state and the state of domicile of the insurer, where so required" at the end of the first sentence of (1); substituted "60 days" for "30 days" in two places in (2); substituted "60-day" for "30-day" in (2); deleted the second and fifth sentences of (2) relating to automatic approval if no action is taken within 30 days.

Case Notes

Disputed Insurance Exclusions Violative of Subrogation Law — Disapproval by Insurance Commissioner Proper: Plaintiff insurance company submitted several insurance forms to the State Auditor/Insurance Commissioner for approval pursuant to 33-1-501. The forms contained coverage exclusions under which plaintiff would not pay for health care costs of its injured beneficiaries if the beneficiaries received or were entitled to receive benefits from any automobile or premises liability policy. The Commissioner subsequently disapproved the language in the forms containing the exclusions. The District Court affirmed the Commissioner's decision and plaintiff appealed, but the Supreme Court affirmed. The Commissioner had the statutory power and authority to disapprove the exclusions. The exclusions violated Montana law by allowing plaintiff to enjoy the benefits of subrogation in the circumstances allowed by the exclusions, and because the exclusions violated or did not comply with insurance law, disapproval of the exclusions by the Commissioner was warranted. Blue Cross & Blue Shield of Mont. v. Mont. St. Auditor & Comm'r of Ins., 2009 MT 318, 352 M 423, 218 P3d 475 (2009). See also Skauge v. Mtn. St. Tel. & Tel., 172 M 521, 565 P2d 628 (1977). However, see Scheafer v. Safeco Ins. Co., 2014 MT 73, 374 Mont. 278, 320 P.3d 967, holding that a requirement that primary coverage be exhausted before secondary insurance coverage is triggered is not subrogation.

Effect of Approval: Approval by Commissioner of form in which an illegal provision appeared did not operate to validate the provision. McCarter v. Glacier Gen. Assurance Co., 169 M 269, 546 P2d 249 (1969).

33-1-502. Grounds for disapproval.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) substituted "the laws of this state" for "this code". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Inserted (5) regarding violation of 49-2-309.

1987 Amendment: At end of (2) inserted clause relating to defense costs in casualty insurance.

Case Notes

Disputed Insurance Exclusions Violative of Subrogation Law — Disapproval by Insurance Commissioner Proper: Plaintiff insurance company submitted several insurance forms to the State Auditor/Insurance Commissioner for approval pursuant to 33-1-501. The forms contained coverage exclusions under which plaintiff would not pay for health care costs of its injured beneficiaries if the beneficiaries received or were entitled to receive benefits from any automobile or premises liability policy. The Commissioner subsequently disapproved the language in the forms containing the exclusions. The District Court affirmed the Commissioner's decision and plaintiff appealed, but the Supreme Court affirmed. The Commissioner had the statutory power and authority to disapprove the exclusions. The exclusions violated Montana law by allowing plaintiff to enjoy the benefits of subrogation in the circumstances allowed by the exclusions, and because the exclusions violated or did not comply with insurance law, disapproval of the exclusions by the Commissioner was warranted. Blue Cross & Blue Shield of Mont. v. Mont. St. Auditor & Comm'r of Ins., 2009 MT 318, 352 M 423, 218 P3d 475 (2009). See also Skauge v. Mtn. St. Tel. & Tel., 172 M 521, 565 P2d 628 (1977). However, see Scheafer v. Safeco Ins. Co., 2014 MT 73, 374 Mont. 278, 320 P.3d 967, holding that a requirement that primary coverage be exhausted before secondary insurance coverage is triggered is not subrogation.

Law Review Articles

Defense Within Limits: The Conflicts of "Wasting" or "Cannibalizing" Insurance Policies, Munro, 62 Mont. L. Rev. 131 (2001).

Part 6
Service of Process

Part Case Notes

Strict Compliance With Service Not Followed — Entry of Default Improper: The plaintiff served a complaint and summons with the Commissioner of Securities and Insurance, who was required to forward the documents to the defendant, a foreign insurer, pursuant to 33-1-601 (now repealed). After a default was entered against the defendant, the defendant moved to set aside the default, claiming neither the plaintiff nor the Commissioner had strictly complied with the service of process for a foreign insurer. The defendant appealed to the Supreme Court after the motion was deemed denied. After reviewing the record, the Supreme Court concluded that the defendant had met its burden to establish doubt that it had received proper notice, reversed the denial of the motion to set aside the default, and remanded the matter for further proceedings. Reservation Operations Center, LLC v. Scottsdale Ins. Co., 2018 MT 128, 391 Mont. 383, 419 P.3d 121.

Bond or Certificate of Authority Not Required for Insurer to File Pleadings in District Court: Plaintiff filed several actions against defendant insurers seeking subrogation for payment of costs associated with petroleum tank releases. The District Court concluded that defendants were currently unauthorized insurers and thus were required under 33-1-615 to post bond or obtain a certificate of authority before filing pleadings in response to the actions. On appeal, defendants argued that the plain language of 33-1-601 (now repealed) makes it clear that once appointment of the insurance commissioner is made to accept service of process on an insurer's behalf, the appointment is irrevocable and remains in effect as long as any contract made by an insurer or an obligation arising from that contract is in force. Defendants first obtained certificates of authority in the 1960s, and plaintiff sued to collect money under insurance contracts issued while defendants had valid certificates of authority. Therefore, under defendants' theory, the requirements of 33-1-615 did not apply. The Supreme Court agreed. The bond and certificate of authority requirements are triggered only when service is effectuated against an unauthorized insurer, but in this case the suits against defendants were all based on insurance contracts issued and obligations that arose under those contracts while defendants had valid certificates of authority, so defendants were not unauthorized insurers, and the bond and certificate of authority requirements did not apply. Suspension of defendants' current ability to transact insurance in Montana did not mean or imply that the irrevocable appointment of service under 33-1-601(now repealed), completed when defendants were authorized insurers, was somehow revoked or suspended. The actions were remanded for further proceedings. Mont. Petroleum Tank Release Comp. Bd. v. NW. Nat'l Cas. Co., 2009 MT 28, 349 M 136, 201 P3d 825 (2009).

No Particular Form Required for Change of Address for Receiving Out-of-State Service of Process: Section 33-1-601 (now repealed) provides that foreign insurers can change the name and address of the person who will receive out-of-state service of process by submitting a new filing with the Commissioner of Insurance. However, the statute does not require the use of a particular form for accomplishment of a change of address. ABC Collectors, Inc. v. Birnel, 2008 MT 35, 341 M 310, 176 P3d 1067 (2008).

Misrepresentation and Improper Process by Attorney — Sanctions: Since under 33-1-602 (now repealed), defendant, a foreign insurer, could only be served by service upon the Commissioner of Insurance, personal jurisdiction over insurer was not obtained when it was served at its Billings claim office. Thus, when plaintiffs' attorney appealed quashing of the service, the appeal was dismissed. Plaintiffs' attorney represented to the District Court's personnel that he had won the appeal and was entitled to a default judgment, and the personnel entered one against insurer for $150,000 punitive damages and $385 costs. The default judgment was void for want of jurisdiction, and the District Court correctly vacated it. As insurer was not properly served, the District Court properly ruled plaintiffs could not take depositions. The attorney was properly adjudged liable to insurer for $4,031.50 under 37-61-406, stating that an attorney guilty of deceit or collusion with intent to deceive the court or a party forfeits to the party injured by his deceit or collusion treble damages. LaFountaine v. St. Farm Mut. Auto. Ins. Co., 215 M 402, 698 P2d 410, 42 St. Rep. 496 (1985).

Venue of Action: Statute (33-1-601, now repealed) cannot be construed, for purpose of venue, under statute providing that actions be tried in county in which defendants reside, as giving a foreign insurance company residency in county of Insurance Commissioner, serving as agent of insurance company for service of process. Truck Ins. Exch. v. Nat'l Farmers Union Property & Cas. Co., 149 M 387, 427 P2d 50 (1967).

Mutual Benefit Associations: Under section 40-2118, R.C.M. 1947 (since repealed), foreign mutual benefit associations could be sued in the courts of Montana; the object of the section in requiring the appointment of an agent in the state upon whom service of process may be made was to provide for the collection of debts due from them to its citizens and to enforce the contracts made in the state through their agents. Reed v. Woodmen of the World, 94 M 374, 22 P2d 819 (1933).

33-1-604. Service of process — domestic insurer.

Compiler's Comments

Effective Date: Section 16, Ch. 60, L. 2019, provided: "[This act] is effective July 1, 2019."

33-1-605. Service of process — foreign or alien insurer — appointment of registered agent.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 157, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 16, Ch. 60, L. 2019, provided: "[This act] is effective July 1, 2019."

Case Notes

Action Against Foreign Association: Under section 6322, R.C.M. 1921 (since repealed, but similar to 33-7-123, now repealed), foreign mutual benefit associations could be sued in the courts of Montana; the object of the section in requiring the appointment of an agent in the state upon whom service of process may be made was to provide for the collection of debts due from them to its citizens and to enforce the contracts made in the state through their agents. Reed v. Woodmen of the World, 94 M 374, 22 P2d 819 (1933).

33-1-606. Service of process by commissioner.

Compiler's Comments

Effective Date: Section 16, Ch. 60, L. 2019, provided: "[This act] is effective July 1, 2019."

33-1-611. Unauthorized Insurers Process Act — interpretation.

Compiler's Comments

Source: Sections 33-1-611 through 33-1-613, 33-1-615, and 33-1-616 were derived from the Unauthorized Insurers Process Act, promulgated by the National Association of Insurance Commissioners and adopted in all states except District of Columbia, Iowa, Louisiana, Maryland, Nevada, South Carolina, Vermont, Washington, West Virginia, and Wisconsin. This section was derived from section 6 of that Act.

33-1-612. Commissioner — process agent for unauthorized insurer doing business in state.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 2 of the Unauthorized Insurers Process Act, promulgated by the National Association of Insurance Commissioners. See compiler's comment at 33-1-611 for scope of Act and list of states having adopted it.

33-1-613. Service of process — criteria mandating designation of commissioner.

Compiler's Comments

2019 Amendment: Chapter 60 in (1) at end of first sentence substituted "the same fee as provided in 33-1-606" for "fees that may be prescribed by law". Amendment effective July 1, 2019.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 2 of the Unauthorized Insurers Process Act, promulgated by the National Association of Insurance Commissioners. See compiler's comment at 33-1-611 for scope of Act and list of states having adopted it.

33-1-614. Exemptions from service of process provisions.

Compiler's Comments

1987 Amendment: In (1) substituted "lines" for "line".

33-1-615. Defense of action by unauthorized insurer.

Compiler's Comments

Source: Section 3 of the Unauthorized Insurers Process Act, promulgated by the National Association of Insurance Commissioners. See compiler's comment at 33-1-611 for scope of Act and list of states having adopted it.

Case Notes

Bond or Certificate of Authority Not Required for Insurer to File Pleadings in District Court: Plaintiff filed several actions against defendant insurers seeking subrogation for payment of costs associated with petroleum tank releases. The District Court concluded that defendants were currently unauthorized insurers and thus were required under 33-1-615 to post bond or obtain a certificate of authority before filing pleadings in response to the actions. On appeal, defendants argued that the plain language of 33-1-601 (now repealed) makes it clear that once appointment of the insurance commissioner is made to accept service of process on an insurer's behalf, the appointment is irrevocable and remains in effect as long as any contract made by an insurer or an obligation arising from that contract is in force. Defendants first obtained certificates of authority in the 1960s, and plaintiff sued to collect money under insurance contracts issued while defendants had valid certificates of authority. Therefore, under defendants' theory, the requirements of 33-1-615 did not apply. The Supreme Court agreed. The bond and certificate of authority requirements are triggered only when service is effectuated against an unauthorized insurer, but in this case the suits against defendants were all based on insurance contracts issued and obligations that arose under those contracts while defendants had valid certificates of authority, so defendants were not unauthorized insurers, and the bond and certificate of authority requirements did not apply. Suspension of defendants' current ability to transact insurance in Montana did not mean or imply that the irrevocable appointment of service under 33-1-601 (now repealed), completed when defendants were authorized insurers, was somehow revoked or suspended. The actions were remanded for further proceedings. Mont. Petroleum Tank Release Comp. Bd. v. NW. Nat'l Cas. Co., 2009 MT 28, 349 M 136, 201 P3d 825 (2009).

33-1-616. Attorney's fee.

Compiler's Comments

Source: Section 4 of the Unauthorized Insurers Process Act, promulgated by the National Association of Insurance Commissioners. See compiler's comment at 33-1-611 for scope of Act and list of states having adopted it.

Part 7
Hearings and Appeals

Part Case Notes

Service of Order on Subsidiaries: Where two orders to show cause, under the predecessor to 33-1-703 (now repealed) (section 167, R.C.M. 1935, now repealed), were directed to an alleged parent corporation said to have control over or ownership of two insurance companies licensed separately to do business within the state, because of the alleged wrongdoing of the alleged parent company, on the theory that the three were one and the two had no separate corporate existence, the Commissioner acquired no jurisdiction over the two companies and Writ of Prohibition should issue because the orders were not properly addressed. State ex rel. Monarch Fire Ins. Co. v. Holmes, 113 M 303, 124 P2d 994 (1942).

33-1-701. Hearings — discretion — written demand — procedure.

Compiler's Comments

2015 Amendment: Chapter 63 in (3) deleted former third sentence that read: "The commissioner shall hold a hearing within 45 days of receipt of a request for a hearing unless postponed by mutual consent of the person requesting the hearing and the commissioner." Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2001 Amendment: Chapter 227 in (1) inserted second sentence providing that hearing procedures in Title 33, chapter 1, apply only to the insurance code; deleted former (2) through (4) that read: "(2) The commissioner shall hold a hearing if required by any provision or upon written demand by a person aggrieved by any act, threatened act, or failure to act or by any report, rule, or order by the commissioner, other than an order for holding a hearing, an order on a hearing, or an order pursuant to a hearing. The person's demand must specify the grounds relied upon as a basis for the relief sought at the hearing, and unless postponed by mutual consent, the hearing must be held within 30 days after receipt by the commissioner of the demand for a hearing.

(3) If within the 30-day period the commissioner does not either grant the hearing or issue an order refusing to set the hearing, then the hearing must be considered to have been refused.

(4) Unless otherwise provided by law, the department shall commence an action for a violation of the insurance code within 2 years of the date of the violation or within 2 years after the department discovers the violation or through the use of reasonable diligence should have discovered the violation, whichever occurs last. Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, an action may not be commenced by the department unless it is brought within 5 years of the date of the violation"; inserted (2) regarding written demand for hearing; inserted (3) regarding conduct of hearings; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 331 inserted (4) establishing statute of limitations for actions brought by state auditor for a violation of the insurance code; and made minor changes in style. Amendment effective October 1, 1999.

Case Notes

No Hearing Required on Complaints Against Insurers: The plaintiff contended that the Insurance Commissioner was required to conduct a hearing on his complaint against an insurer who refused to provide coverage for him. The Supreme Court ruled that the clear language of the statute only required the Commissioner to hold hearings on grievances arising from actions of the Commissioner. (See 2001 amendment.) Gerber v. Comm'r of Ins., 242 M 369, 786 P2d 1199, 47 St. Rep. 399 (1990).

33-1-705. Rehearing.

Compiler's Comments

2003 Amendment: Chapter 380 deleted former second sentence that read: "Notice of such rehearing or reargument shall be given as provided in 33-1-703"; and made minor changes in style. Amendment effective October 1, 2003.

33-1-707. Administrative or civil action — statute of limitations.

Compiler's Comments

2017 Amendment: Chapter 396 in (1) and (2) after "commence an" inserted "administrative or civil". Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

Effective Date: This section is effective October 1, 2001.

33-1-711. Appeals of commissioner's order — stays — exceptions.

Compiler's Comments

2001 Amendment: Chapter 227 deleted former (1) through (7) that read: "(1) An appeal from the commissioner may be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to the hearing or whose pecuniary interests are directly and immediately affected by any order or refusal and who is aggrieved by an order or refusal may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from the order on hearing or the refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal must be taken to the district court of Lewis and Clark County by filing written notice of appeal in the court and by filing a copy of the notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an insurance producer or surplus lines insurance producer, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal, the court has full jurisdiction and shall determine whether the filing operates as a stay of the order or action appealed from.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced at the hearing. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall, within the 20-day period, make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which the appeal is taken.

(4) Upon receipt of the transcripts and evidence, the court shall hear the matter as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents filed by the commissioner, together with additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner, in whole or in part, or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs must be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any judgment may be made only by order of the supreme court upon the giving of security as that court considers proper"; inserted (1) requiring filing of an appeal of the commissioner's order in Lewis and Clark County district court; inserted (2) allowing filing of an appeal from suspension or revocation of a certificate of authority or license in the district court where the insurer or producer has its principal place of business or the licensee resides; inserted (3) requiring a request for a stay within 30 days of filing an appeal; inserted (4) requiring award of costs as in civil actions; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: In (4), in first sentence after "matter", deleted "de novo".

1989 Amendment: In (1), in two places, substituted "insurance producer" for "agent, solicitor" and "agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

1987 Amendments: Chapter 119 in (1) inserted third sentence relating to a request for a stay; and at end of (2) deleted "except that in the following instances the filing of the notice of appeal shall automatically stay the order appealed from pending the judgment of the district court on the appeal:

(a) appeal from suspension or revocation of the license of an agent, solicitor, or surplus line agent;

(b) appeal from suspension or revocation of the certificate of authority of an insurer".

Chapter 537 in (1), in last sentence, and in (2)(a) substituted "lines" for "line".

Case Notes

Stay of Order Pending Appeal: Contention that the appeal provided for by the predecessor to this section, section 40-1106, R.C.M. 1947 (since repealed), from an order of revocation was inadequate because there was no provision for a stay pending appeal was held without merit since, under the general rule, an appeal in a matter tried de novo in the appellate tribunal operates automatically to stay the Commissioner's order, to deprive him of any further jurisdiction, and to prevent him from publishing the order pending the appeal. (See 2001 amendment.) State ex rel. Pearl Assurance Co. v. Holmes, 113 M 144, 124 P2d 700 (1942).

Part 8
Interference With Medical Communications

Part Compiler's Comments

Applicability: Section 7, Ch. 527, L. 1997, provided: "[This act] applies to contracts entered into or renewed after [the effective date of this act] [effective October 1, 1997] between a health care provider and a health carrier or managed care organization."

33-1-804. Civil penalty — civil action for collection of penalty.

Compiler's Comments

2021 Amendment: Chapter 535 in (2) near beginning after "may bring a civil action" substituted "in the district court in the county in which the violation occurred" for "in the district court of the first judicial district" and inserted second to last sentence concerning a violation that occurred in more than one county. Amendment effective October 1, 2021.

Part 11
Jurisdiction of Providers of Health Care Benefits

33-1-1102. Authority and jurisdiction of insurance department.

Compiler's Comments

1989 Amendment: Changed "speech pathology" to "speech-language pathology".

Source: Section 1 of the Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Model Act, drafted by the National Association of Insurance Commissioners, 1982.

33-1-1111. How to show jurisdiction.

Compiler's Comments

1995 Amendment: Chapter 420 inserted second sentence concerning establishing jurisdiction by appropriate means; and made minor changes in style.

Source: Section 2 of the Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Model Act, drafted by the National Association of Insurance Commissioners, 1982.

33-1-1112. Subject to state laws.

Compiler's Comments

Source: Section 4 of the Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Model Act, drafted by the National Association of Insurance Commissioners, 1982.

33-1-1113. Examination.

Compiler's Comments

Source: Section 3 of the Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Model Act, drafted by the National Association of Insurance Commissioners, 1982.

33-1-1114. Disclosure.

Compiler's Comments

Source: Section 5 of the Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Model Act, drafted by the National Association of Insurance Commissioners, 1982.

Part 12
Insurance Fraud Protection

Part Compiler's Comments

Severability: Section 10, Ch. 237, L. 1995, was a severability clause.

Effective Date: Section 12, Ch. 237, L. 1995, provided: "[This act] [33-1-1201 through 33-1-1206, 33-1-1210, and 33-1-1211] is effective July 1, 1995."

33-1-1202. Administrative or civil insurance fraud.

Compiler's Comments

2017 Amendment: Chapter 396 in introductory clause after "the act of" inserted "administrative or civil". Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2013 Amendment: Chapter 169 inserted (7) concerning counterfeit insurance documents; and made minor changes in style. Amendment effective April 9, 2013.

2003 Amendment: Chapter 380 in (1) and (3) after "purported insurer" substituted "producer, or administrator, as defined in 33-17-102" for "broker, or agent"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Adjusters Encompassed in Definition of Administrator — Jury Instruction Proper: At his trial for felony theft by insurance fraud, the defendant objected to a jury instruction offered by the state that an administrator is a person who adjusts or settles claims in connection with life, disability, property, or casualty insurance and therefore was encompassed by the insurance fraud statute. The District Court concluded that independent adjusters were not excluded from the statutory definition of "administrator" and gave the state's instruction. The Supreme Court upheld the jury instruction, holding that the definition of the term states that an administrator may be a person who adjusts or settles claims and noting that while the definition excludes 12 specific categories of persons or entities who are not administrators, independent adjusters are not one of those exclusions. St. v. Schaeffer, 2014 MT 47, 374 Mont. 93, 321 P.3d 809.

Restitution Proper for Insurance Fraud: Borsberry was convicted of insurance fraud and ordered to pay restitution of $22,997.52 to the insurer in repayment of the fraudulently obtained amount. Borsberry appealed on grounds that restitution was not proper because the insurer was not a victim who suffered a pecuniary loss. The Supreme Court disagreed. Borsberry's policy contained a provision that his policy would be voided if a fraudulent claim was filed. The insurer paid the fraudulent claim under a reservation of rights and suffered a pecuniary loss based on Borsberry's criminal activity. Under Tyler v. Fireman's Fund Ins. Co., 255 M 174, 841 P2d 538 (1992), insurance payments made under fraudulent claims entitle the insurer to restitution in the amount of the payments. The restitution fell within statutory parameters and was affirmed. St. v. Borsberry, 2006 MT 126, 332 M 271, 136 P3d 993 (2006).

Sufficient Evidence of Insurance Fraud Despite Conflicting Evidence: Borsberry was cited for criminal endangerment while engaging in a speed contest, false reporting to law enforcement, and insurance fraud. In light of conflicting evidence, the jury acquitted on the criminal endangerment and false information charges, and Borsberry contended that insufficient evidence existed to convict on insurance fraud. However, the conflicting evidence did not render the state's evidence regarding insurance fraud insufficient to support a guilty verdict, nor did the acquittals equate to an affirmative finding that Borsberry did not engage in a speed contest that voided his insurance policy. Viewed in a light most favorable to the prosecution, the jury could rationally have concluded that Borsberry provided incomplete information to the insurer, constituting insurance fraud. The conviction was affirmed. St. v. Borsberry, 2006 MT 126, 332 M 271, 136 P3d 993 (2006).

33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and producers — notice exception.

Compiler's Comments

2017 Amendment: Chapter 396 in (3) after "related insurance regulation" substituted "or any applicable provisions of Title 33, chapter 1, part 15" for "or applicable sections of the criminal code"; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

1997 Amendments: Chapter 276 at beginning of (2) inserted exception clause; inserted (4) requiring notice of alleged insurance fraud involving claim or application submitted to or issued by the State Fund to be made within 60 days; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 531 in (2), near beginning of first sentence after "employee", deleted "or producer" and inserted second through fourth sentences regarding reporting procedures when an insurance fraud is committed; and made minor changes in style.

Preamble: The preamble attached to Ch. 276, L. 1997, provided: "WHEREAS, it is the intent of the state compensation insurance fund to assist all Montanans by reducing the unfunded liability of the old fund, terminating the old fund liability tax when the old fund is adequately funded, which is currently estimated to occur as early as June 30, 1999, providing for the payment of dividends to policyholders, and maintaining a viable state compensation insurance fund; and

WHEREAS, there was an unfunded liability of $355 million as of June 30, 1996, for claims for workers' compensation injuries occurring before July 1, 1990, in the old fund, which included $129 million in outstanding bond debt; and

WHEREAS, the old fund is funded with the old fund liability tax paid by employers, employees, and self-employed persons, generating as much as $50 million each year; and

WHEREAS, the surplus of $231 in the new fund as of June 30, 1996, allowed the Board of Directors of the State Fund to declare a dividend of up to $109 million to retire the outstanding bond debt in the old fund; and

WHEREAS, the unfunded liability in the old fund will be an estimated $200 million deficit by June 30, 1997, and the surplus or the excess of assets above the reserves that are set aside to meet the claim liability in the new fund will be an estimated $127 million by June 30, 1997; and

WHEREAS, current state law requires the State Fund to use dividends to be applied first to old fund outstanding liability rather than paying dividends directly to policyholders, the State Fund shall, no later than June 30, 1998, transfer $63.8 million to the old fund account to pay old fund claims to allow direct payment of dividends to policyholders; and

WHEREAS, the $20 million appropriation received by the State Fund from the general fund during the June 1989 Special Session partially addressed the unfunded liability issue existing at that time in the old fund and canceled a planned 22% rate increase; and

WHEREAS, the State Fund now agrees to repay the $20 million appropriation to the general fund by June 30, 1999, in lieu of transferring additional funds to the old fund account to provide the general fund with additional revenue and to remove any perception that the State Fund remains a burden on the general fund; and

WHEREAS, because decreases in premium rates totaled 35% in fiscal years 1996 and 1997 and legislative changes in benefit levels have resulted in the return of private carriers, the 15% limitation on administration expenses as a percent of the prior year's premium will significantly impact the State Fund's ability to provide service to policyholders and their injured workers; and

WHEREAS, the State Fund seeks to improve the level of services provided to customers without increasing existing State Fund staffing levels by working with private sector-licensed insurance producers; and

WHEREAS, in response to Haag v. Montana Schools Group Insurance Authority, 274 M 109, 906 P.2d 693 (1995), in which the Montana Supreme Court ruled that an insurer's failure to comply with the time limitations for accepting or denying a workers' compensation claim constituted acceptance of the claim, current law needs to be clarified to provide that the failure to comply with the time limitations does not constitute acceptance of the claim."

Severability: Section 32, Ch. 276, L. 1997, was a severability clause.

Section 46, Ch. 531, L. 1997, was a severability clause.

Case Notes

No Malice in Cooperating With Insurance Fraud Investigation — Summary Judgment Proper: Sherner was charged with felony theft by common scheme for defrauding an insurer. Sherner subsequently sued the insurer for malicious prosecution. The District Court concluded that the insurer was immune from civil liability pursuant to 33-1-1210 and summarily dismissed the claim, and on appeal, the Supreme Court affirmed. The court applied the definition of malice in 1-1-204 to 33-1-1210, concluding that the insurer did not act with malice in investigating the claim against Sherner. Absent a showing of malice, the insurer was not subject to liability for cooperating with an investigation of insurance fraud, so summary judgment for defendants was proper. Sherner v. Nat'l Loss Control Serv. Corp., 2005 MT 284, 329 M 247, 124 P3d 150 (2005).

33-1-1210. Immunity from liability.

Case Notes

No Malice in Cooperating With Insurance Fraud Investigation — Summary Judgment Proper: Sherner was charged with felony theft by common scheme for defrauding an insurer. Sherner subsequently sued the insurer for malicious prosecution. The District Court concluded that the insurer was immune from civil liability pursuant to this section and summarily dismissed the claim, and on appeal, the Supreme Court affirmed. The court applied the definition of malice in 1-1-204 to this section, concluding that the insurer did not act with malice in investigating the claim against Sherner. Absent a showing of malice, the insurer was not subject to liability for cooperating with an investigation of insurance fraud, so summary judgment for defendants was proper. Sherner v. Nat'l Loss Control Serv. Corp., 2005 MT 284, 329 M 247, 124 P3d 150 (2005).

33-1-1211. Administrative or civil penalties.

Compiler's Comments

2017 Amendment: Chapter 396 in (1) after "has committed" inserted "administrative or civil"; deleted former (2) that read: "(2) Any person who purposely or knowingly commits insurance fraud commits the offense of theft under 45-6-301"; in (2) after "who commits" inserted "administrative or civil"; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

Part 13
Insurer Insurance Fraud Protection

33-1-1301. Insurance, viatical settlement, medical care discount card, pharmacy discount card, and securities fraud education and prevention program — definitions.

Compiler's Comments

2009 Amendment: Chapter 272 in (1)(a) and (1)(b) after "insurance" inserted "viatical settlement"; in (2) in introductory clause substituted "part" for "section"; inserted (2)(b) defining viatical settlement broker, viatical settlement contract, and viatical settlement provider; and made minor changes in style. Amendment effective April 17, 2009.

Severability: Section 9, Ch. 272, L. 2009, was a severability clause.

2005 Amendment: Chapter 456 in (1)(a) and (1)(b) after "insurance" inserted "medical care discount card, pharmacy discount card"; inserted (2) defining medical care discount card and pharmacy discount card; and made minor changes in style. Amendment effective October 1, 2005.

33-1-1302. Insurance, viatical settlement, medical care discount card, and pharmacy discount card administrative or civil fraud — insurer.

Compiler's Comments

2019 Amendment: Chapter 62 in (5) in first sentence after "fraud with interest" deleted "of 10% a year" and inserted last sentence regarding calculation of interest rate; and in (6) near end substituted "the rate provided in 25-9-205" for "10% a year". Amendment effective October 1, 2019.

2017 Amendment: Chapter 396 deleted former (8) that read: "(8) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds, viatical settlement proceeds, a medical care discount card fee, or a pharmacy discount card fee commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney." Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2009 Amendment: Chapter 272 in (1) after "insurance" inserted "viatical settlement"; inserted (1)(b) concerning a violation of 33-1-1304; inserted (2) identifying when a person commits insurance fraud or viatical settlement fraud; in (3) near middle after "for a violation of" inserted "33-2-1304 or"; in (4) near beginning and near end after "insurance" inserted "viatical settlement"; in (5) near beginning substituted "a violation of this part" for "insurance fraud" and near middle substituted "person" for "insurer, purported insurer, or insurance producer"; in (8) near beginning after "premiums or proceeds" inserted "viatical settlement proceeds"; deleted former (8) that read: "As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102"; and made minor changes in style. Amendment effective April 17, 2009.

Severability: Section 9, Ch. 272, L. 2009, was a severability clause.

2007 Amendment: Chapter 44 in (7) near beginning after "care discount card fee" inserted "or a pharmacy discount card fee"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 456 in (1) after "of insurance" inserted "medical care discount card, or pharmacy discount card" and after "selling insurance" inserted "a medical care discount card, or a pharmacy discount card"; in (3) in two places after "insurance" inserted "medical care discount card, or pharmacy discount card" and near end after "refund" inserted "or other benefit"; in (7) near beginning after "proceeds" inserted "or a medical care discount card fee", after "theft" inserted "and deceptive practices", and after "45-6-301" inserted "and 45-6-317"; inserted (8) defining medical care discount card and pharmacy discount card; and made minor changes in style. Amendment effective October 1, 2005.

33-1-1303. Reporting requirements.

Compiler's Comments

2009 Amendment: Chapter 272 in (1) in first sentence near beginning after "insurance" inserted "viatical settlement"; in (2) near end after "insurance" inserted "viatical settlement"; and made minor changes in style. Amendment effective April 17, 2009.

Severability: Section 9, Ch. 272, L. 2009, was a severability clause.
2007 Amendment: Chapter 44 in (1) near beginning of first sentence and in (2) near end after "insurance" inserted "medical care discount card, or pharmacy discount card"; and made minor changes in style. Amendment effective October 1, 2007.

33-1-1304. Viatical settlement fraud.

Compiler's Comments
Severability: Section 9, Ch. 272, L. 2009, was a severability clause.
Effective Date: Section 10(1), Ch. 272, L. 2009, provided that this section is effective April 17, 2009.

Part 14
Property and Casualty Actuarial Opinion Act

Part Compiler's Comments
Source: This part is based on model legislation adopted by the National Association of Insurance Commissioners in 2006.

33-1-1401. Short title.

Compiler's Comments
Effective Date: Section 5, Ch. 50, L. 2009, provided: "[This act] is effective January 1, 2010."

33-1-1402. Actuarial opinion of reserves and supporting documentation — definition.

Compiler's Comments
Effective Date: Section 5, Ch. 50, L. 2009, provided: "[This act] is effective January 1, 2010."

33-1-1403. Confidentiality.

Compiler's Comments
2015 Amendment: Chapter 348 in (1) substituted "public record" for "public writing" and substituted "2-6-1002" for "2-6-101". Amendment effective October 1, 2015.
Severability: Section 72, Ch. 348, L. 2015, was a severability clause.
Effective Date: Section 5, Ch. 50, L. 2009, provided: "[This act] is effective January 1, 2010."

Part 15
Insurance Fraud Penalties

Part Compiler's Comments
Effective Date: Section 34, Ch. 396, L. 2017, provided that this part is effective on passage and approval." Approved May 19, 2017.
Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

33-1-1502. Application of criminal law and procedure.

Compiler's Comments
2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 157, L. 2023. Amendment effective April 19, 2023.
Applicability: Section 58, Ch. 157, L. 2023, provided that this section applies to offenses that occur on or after April 19, 2023.

CHAPTER 2
REGULATION OF INSURANCE COMPANIES

Chapter Case Notes
Insurer-Imposed Billing Rules and Procedures Violative of Rules of Professional Conduct: When presented with the question of whether an attorney licensed to practice in Montana or admitted pro hac vice may agree to abide by an insurer's billing and practice rules that impose conditions limiting or directing the scope and extent of representation of the attorney's client, the insured, the Supreme Court considered the requirement imposed by some insurers that defense counsel secure the consent of the insurer's claim professional before proceeding with the case, in order to ensure adequate consultation. Insurers cited Jessen v. O'Daniel, 210 F. Supp. 317 (D.C. Mont. 1962), for the proposition that under Montana law, in the absence of a real conflict, the insurer and the insured are dual clients of defense counsel, arguing that as co-client

of defense counsel, the insurer may require preapproval of attorney activities. The Supreme Court noted that although decisions subsequent to Jessen recognized the conclusion that an insurance contract may place absolute control of litigation in the hands of the insurer, the dual representation doctrine is not recognized under the Rules of Professional Conduct, but applies only in determining whether the communications between an insurer and its attorneys are subject to the attorney-client privilege. The contractual relationship between insurer and insured does not supersede or waive defense counsels' obligations under the Rules of Professional Conduct. Rather, the Rules of Professional Conduct have application in all cases involving attorneys and clients, and under the rules, the insured is the sole client of defense counsel. The court concluded that defense counsel in Montana who submit to the requirement of prior approval from the insurer violate the Rules of Professional Conduct by fundamentally interfering with their duties to exercise independent judgment and to give their undivided loyalty to insureds. The court noted that the prior approval requirement also creates a substantial appearance of impropriety by suggesting that the insurer, rather than defense counsel, controls the day-to-day details of the defense. In re Rules of Professional Conduct & Insurer Imposed Billing Rules & Procedures, 2000 MT 110, 299 M 321, 2 P3d 806, 57 St. Rep. 433 (2000).

Part 1
Authorization of Insurers

Part Compiler's Comments

Not Codified: Sections 40-2612 through 40-2614, R.C.M. 1947, relating to the transition of forms, certificates of authority, and corporate existence of insurers with the passage of the 1959 Montana Insurance Code, were not codified in the MCA as being temporary. These sections have not been repealed and are still valid law. Citation may be made to sections 12, 13, 14, and 15, respectively, Ch. 286, L. 1959.

Part Case Notes

Antitrust Action Barred: A class action suit against a life insurance company that alleged Sherman antitrust violations was barred by the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, 1012(b). Freier v. N.Y. Life Ins. Co., 679 F2d 780 (1982).

33-2-101. Certificate of authority required.

Compiler's Comments

2017 Amendment: Chapter 396 deleted former (3) that read: "(3) A person who knowingly violates this section is guilty of a felony punishable as provided in 46-18-213 and in addition is subject to the civil penalty provided in 33-1-317." Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2005 Amendment: Chapter 562 in (1) substituted language requiring that a person acting as an insurer and an insurer transacting insurance in this state have a subsisting certificate of authority issued by the commissioner for former language that read: "No person shall act as an insurer and no insurer shall transact insurance in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner, except as to such transactions as are expressly otherwise provided for in this code"; inserted (3) providing penalties; and made minor changes in style. Amendment effective October 1, 2005.

33-2-104. Representing or aiding unauthorized insurer prohibited.

Compiler's Comments

2019 Amendment: Chapter 62 in (1) near beginning after "A person" deleted "in this state" and after "insurance producer" inserted "in this state". Amendment effective October 1, 2019.

2017 Amendment: Chapter 396 deleted former (3) that read: "(3) A person who knowingly violates this section is guilty of a felony punishable as provided in 46-18-213." Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2005 Amendment: Chapter 562 in (3) substituted "A person who knowingly violates this section is guilty of a felony punishable as provided in 46-18-213" for "Any person violating this section shall upon conviction thereof be guilty of a felony"; and made minor changes in style. Amendment effective October 1, 2005.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-2-105. Suits by unauthorized insurers prohibited.

Case Notes

Access to Courts: Section 33-2-101 prohibits the transaction of insurance business without a certificate of authority from the Commissioner but does not deny unauthorized companies access to the courts; a certificate of authority is not required to maintain and protect policies lawfully written in Montana. Empire Life Ins. Co. of Am. v. Sorenson, 347 F. Supp. 987 (D.C. Mont. 1972).

33-2-106. General eligibility of insurers.

Case Notes

Unincorporated Associations: Section 40-1301, R.C.M. 1947 (since repealed), expressly authorizing unincorporated associations organized under the laws of the United States or any of its states or territories to engage in the insurance business in Montana, was a special statute, and such associations were therefore unaffected by the general one (27-28-101), providing that a civil action may be brought in the name of the state against an association which acts as a corporation without being legally incorporated. State ex rel. Intermtn. Lloyds v. Porter, 88 M 347, 294 P 363 (1930).

Foreign Corporations: Title 40, ch. 14, R.C.M. 1947 (since repealed), contained a distinct system with relation to stock and mutual insurance companies. This system extended to associations to be formed in the state and to foreign insurance companies as well. State ex rel. Aachen & Munich Fire Ins. Co. v. Rotwitt, 17 M 41, 41 P 1004 (1895).

33-2-108. Combinations of insuring powers.

Compiler's Comments

1985 Amendment: Near beginning of (1) after "(4)", inserted "and 33-25-213".

33-2-109. Capital or surplus funds required.

Compiler's Comments

1999 Amendment: Chapter 472 inserted (1)(b) providing a schedule for insurers licensed on or after October 1, 1999; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1983 Amendment: In table in (1), inserted provision relating to "credit life and disability"; and inserted (5) establishing capital or surplus requirements for credit life and disability insurers that are not resident domestic insurers.

1981 Amendment: Deleted "foreign" before "mutual or foreign reciprocal insurer" in the middle of (1).

Not Codified: The last sentence of section 40-2807(1), R.C.M. 1947, allowing a 5-year grace period to bring up capital surplus of existing certified insurers, was not codified in the MCA because it is a grandfather clause. This sentence has not been repealed and is still valid law. Citation may be made to sec. 52, Ch. 286, L. 1959.

Case Notes

Funds on Deposit as Security — Considered as Capital Stock: The members of an unincorporated association seeking to carry on a fire insurance business deposited with the Insurance Commissioner of the state of the association's creation approved securities aggregating $900,000, with the Commissioner being empowered to require additional securities in case those deposited should depreciate in value. The securities remained the property of the individuals but could not be withdrawn until all their proportionate liability against them had been discharged. There was no joint liability on the part of the members of the association; actions on the policies could be commenced against and service of process had upon the attorney-in-fact of the association, authorized to write insurance for it. Since the deposited securities could not be withdrawn so long as there existed an outstanding obligation chargeable against them but were set aside and dedicated to the business of the association as a final guaranty of the payment of all losses sustained under its policies of insurance, they constituted capital stock in an amount in excess of that prescribed by section 40-1422, R.C.M. 1947 (since repealed), and therefore, refusal of a license based on insufficiency of capital was not warranted. State ex rel. Intermtn. Lloyds v. Porter, 88 M 347, 294 P 363 (1930).

33-2-110. Special surplus required.

Compiler's Comments

1981 Amendment: Substituted "mutual" for "foreign mutual" in four places.

33-2-111. Deposit requirement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-112. Management qualifications and affiliations.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-115. Application for certificate of authority.

Compiler's Comments

2019 Amendment: Chapter 60 in (6) inserted "if a foreign or alien insurer", substituted "a registered agent to" for "the commissioner pursuant to 33-1-601, as its attorney to", and inserted "pursuant to 33-1-605". Amendment effective July 1, 2019.

2003 Amendment: Chapter 380 at beginning of (10) inserted reference to domestic insurer; and made minor changes in style. Amendment effective October 1, 2003.

33-2-116. Issuance or refusal of certificate of authority — state ownership of certificate.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 157, L. 2023. Amendment effective October 1, 2023.

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 271 in (3) in second sentence after "expiration" deleted "suspension"; and made minor changes in style. Amendment effective July 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1981 Amendment: Increased the time specified in (1) from 30 to 180 days.

Case Notes

Estoppel by Exercise of Authority: Under rule that one who has acted under a statute or has claimed its benefits to the detriment of others may not question its constitutionality, mutual fire insurance companies which had entered into contracts of insurance with the state with relation to its public buildings on the strength of section 40-1423, R.C.M. 1947 (since repealed), authorizing such companies to write insurance on the mutual plan (on the single cash premium plan) if permitted to do so by the laws of their states, were estopped thereafter from asserting, in case of fire loss, that the section was unconstitutional in that, under it, they were given a right which by section 40-1431, R.C.M. 1947 (since repealed), was denied to domestic corporations of the same character, contrary to Art. XV, sec. 11, 1889 Mont. Const. McMahon v. Cooney, 95 M 138, 25 P2d 131 (1933).

33-2-117. Renewal, expiration, reinstatement, and amendment of certificate of authority.

Compiler's Comments

2015 Amendment: Chapter 63 in (3) at end of first sentence deleted "in addition to the fee provided for in 33-2-708". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

1999 Amendment: Chapter 316 in (1) in first sentence after "subject to" substituted "renewal" for "continuance"; in (3) near middle of first sentence after "payment of" inserted "a fee of $100"; and made minor changes in style. Amendment effective January 1, 2000.

1995 Amendment: Chapter 379 in (1), in second sentence, substituted "March 1" for "May 15"; in (2), in second sentence after "notify", substituted "the insurer of its failure to pay the continuation fee that can result in the expiration" for "the insurer of the occurrence of any such failure resulting in impending expiration"; in (3), near beginning of first sentence after "may", deleted "in his discretion" and in last sentence substituted "may be" for "shall be"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1987 Amendment: In (2), after "expire", deleted "as".

33-2-118. Mandatory revocation or suspension of certificate of authority.

Case Notes

Powers of Commissioner: The State Auditor and ex officio Commissioner of Insurance had general jurisdiction under Art. VII, sec. 1, 1889 Mont. Const. (similar to Art. VI, sec. 1, 1972 Mont. Const.), and sections 40-1105 and 40-1106, R.C.M. 1947 (since repealed), of matters relating to insurance and had the power, under certain circumstances enumerated in those statutes, to revoke certificates of authority of insurance companies to do business in the state. State ex rel. Pearl Assurance Co. v. Holmes, 113 M 144, 124 P2d 700 (1942).

33-2-119. Suspension or revocation for violations and special grounds.

Compiler's Comments

1997 Amendment: Chapter 310 in (1), in opening clause after "may", deleted " in his discretion"; deleted (1)(c) that read: "(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431"; in (3), after "may", deleted "in his discretion and"; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 14, Ch. 310, L. 1997, was a severability clause.

1989 Amendments: Chapter 613 inserted (1)(c) relating to failure to accept equitable apportionment of workers' compensation coverage. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

Chapter 620 in (2)(d) made failure to pay a single claim grounds for suspension or revocation; and made minor changes in phraseology.

1987 Amendment: In (1)(b), after "resident", inserted "located"; and in (2)(e) substituted "lines" for "line".

1983 Amendment: Inserted (1)(b) referring to reinsurance of more than 90% of an insurer's risks; and deleted former (2)(f), which read: "has reinsured all its risks in their entirety in another insurer".

1981 Amendment: Added (2)(f) (see 1983 amendment note).

Case Notes

Powers of Commissioner: The State Auditor and ex officio Commissioner of Insurance had general jurisdiction under Art. VII, sec. 1, 1889 Mont. Const. (similar to Art. VI, sec. 1, 1972 Mont. Const.), and sections 40-1105 and 40-1106, R.C.M. 1947 (since repealed), of matters relating to insurance and had the power, under certain circumstances enumerated in the statutes, to revoke certificates of authority of insurance companies to do business in the state. State ex rel. Pearl Assurance Co. v. Holmes, 113 M 144, 124 P2d 700 (1942).

Mandate for Revocation of License — Under Former Law: Where a surety company did not perfect its appeal from a judgment in an action on a constable's bond until the 95th day after rendition but its undertaking on appeal was satisfactory to the judgment creditor, refusal to grant the creditor a Writ of Mandate against the Commissioner to compel revocation of the company's license was not error since plaintiff's rights were fully protected and could not be affected either by the issuance or denial of the Writ, and the effect of its issuance would have been the destruction of the company's business in the state without an opportunity to be heard, it not being a party to the original action. Stabler v. Porter, 72 M 62, 232 P 187 (1924).

Quo Warranto — Action Against Surety Company's Bond: Where the license of a surety company is sought to be revoked for failure to pay a judgment rendered against it in an action on a bond furnished by it, quo warranto may be resorted to. Stabler v. Porter, 72 M 62, 232 P 187 (1924).

33-2-120. Notice of suspension or revocation — effect upon producer's authority.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-2-121. Duration of suspension — insurer's obligations — reinstatement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: In (1) substituted "and shall continue until rescinded or otherwise removed by the commissioner" for "but not to exceed 1 year"; and at beginning of (3) deleted "Upon expiration of the suspension period", after "such period" inserted "of suspension", substituted "may be reinstated if" for "shall automatically reinstate unless", and deleted from end provisions relating to notice and conditions of automatic reinstatement.

33-2-122. Rights and duties of foreign insurer.

Compiler's Comments

Source: This section is similar to 35-1-1005 (now repealed), which was derived from section 100 of the ABA Model Business Corporation Act (1960).

33-2-126. Admission as domestic insurer — conversion to foreign insurer.

Compiler's Comments

1999 Amendment: Chapter 316 in (1) at end of first sentence deleted "and paying the filing fees specified in 33-2-708"; and made minor changes in style. Amendment effective January 1, 2000.

1991 Statement of Intent: The statement of intent attached to Ch. 132, L. 1991, provided: "A statement of intent is required for this bill because it grants additional rulemaking authority to the commissioner of insurance. Under [section 3] [33-2-128] of the bill, the commissioner may adopt rules and regulations to enforce the provisions of [sections 1 and 2] [33-2-126 and 33-2-127] that pertain to changes of domicile by foreign and domestic insurers."

Effective Date — Retroactive Applicability: Section 5, Ch. 132, L. 1991, provided: "[This act] is effective on passage and approval [approved March 20, 1991] and applies retroactively, within the meaning of 1-2-109, to January 1, 1991."

33-2-127. Effects of transfer of domicile.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Statement of Intent: The statement of intent attached to Ch. 132, L. 1991, provided: "A statement of intent is required for this bill because it grants additional rulemaking authority to the commissioner of insurance. Under [section 3] [33-2-128] of the bill, the commissioner may adopt rules and regulations to enforce the provisions of [sections 1 and 2] [33-2-126 and 33-2-127] that pertain to changes of domicile by foreign and domestic insurers."

Effective Date — Retroactive Applicability: Section 5, Ch. 132, L. 1991, provided: "[This act] is effective on passage and approval [approved March 20, 1991] and applies retroactively, within the meaning of 1-2-109, to January 1, 1991."

33-2-128. Authority to promulgate rules and regulations.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 132, L. 1991, provided: "A statement of intent is required for this bill because it grants additional rulemaking authority to the commissioner of insurance. Under [section 3] [33-2-128] of the bill, the commissioner may adopt rules and regulations to enforce the provisions of [sections 1 and 2] [33-2-126 and 33-2-127] that pertain to changes of domicile by foreign and domestic insurers."

Effective Date — Retroactive Applicability: Section 5, Ch. 132, L. 1991, provided: "[This act] is effective on passage and approval [approved March 20, 1991] and applies retroactively, within the meaning of 1-2-109, to January 1, 1991."

Part 2

State of Entry — Trusteed Assets of Alien Insurers

33-2-202. Required deposit of assets.

Compiler's Comments

1999 Amendment: Chapter 304 at end of (2) substituted reference to chapter 12 for reference to chapter 2, part 8; and made minor changes in style. Amendment effective July 1, 1999.

33-2-205. Trust agreement — approval.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-208. Withdrawal of approval.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-211. Statement of trustee.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-213. Withdrawal of assets.

Compiler's Comments

1999 Amendment: Chapter 304 in (1)(b) substituted reference to chapter 12 for reference to chapter 2, part 8; and made minor changes in style. Amendment effective July 1, 1999.

33-2-214. Substitution of trustee.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3

Authorization of Surplus Lines Insurers, Insurance Producers, and Insurance

Part Compiler's Comments

Saving Clause: Section 32, Ch. 537, L. 1987, was a saving clause.

Severability: Section 33, Ch. 537, L. 1987, was a severability section.

Part Administrative Rules

Title 6, chapter 6, subchapter 28, ARM Surplus lines insurance transactions.

33-2-301. Short title — purpose — definitions.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 48 in (2)(c) substituted "unauthorized" for "authorized"; in (3) in definition of natural disaster multiperil insurance substituted "combination of" for "bundled" and in definition of surplus lines insurance in (i) inserted reference to inland marine insurance; and made minor changes in style. Amendment effective March 7, 2019.

Chapter 410 in (3) inserted definition of disability income insurance; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 50 inserted definition of natural disaster multiperil insurance; and made minor changes in style. Amendment effective February 25, 2015.

2011 Amendment: Chapter 350 in (3) inserted definitions of affiliated, affiliated group, approved risk list, control, exempt commercial purchaser, home state, independently procured insurance, multistate risk, principal place of business, principal residence, qualified risk manager, single-state risk, and state; in definition of eligible surplus lines insurer substituted "that is eligible to issue" for "with which a surplus lines insurance producer may place"; in definition of producing insurance producer substituted "a Montana-licensed property and casualty" for "the individual"; in definition of surplus lines insurance in (i) substituted current definition for "means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance"; in definition of unauthorized insurer substituted current definition for "means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states"; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2009 Amendments — Composite Section: Chapter 271 in definition of surplus lines insurance producer near beginning after "individual" substituted "or business entity" for "partnership, or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 313 substituted introductory clause of (2) concerning purpose for former text that read: "This part must be applied to"; inserted (3)(b) defining business entity; in definition of surplus lines insurance producer after "individual" substituted "or business entity" for "partnership, or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

1995 Amendment: Chapter 379 in (3) deleted definition of kind of insurance that read: ""Kind of insurance" means one of the types of insurance required to be reported in the annual statement filed with the commissioner by an authorized insurer"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1989 Amendment: Substituted references to surplus lines insurance producer for references to surplus lines agent and references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, did not direct the Code Commissioner to substitute references to insurance producer for references to insurance agent or agent in this section. However, the Code Commissioner has made the change in this section to reflect the intent of sec. 1, Ch. 713, L. 1989, and to correspond with changes made elsewhere by Ch. 713, L. 1989.

1987 Amendment: In (1) changed name of Act from Surplus Line Insurance Law; inserted (2) specifying application of part; and inserted (3) providing definitions.

Administrative Rules

ARM 6.6.2808 Eligible surplus lines insurers list.

33-2-302. Home state exclusive authority — conditions precedent to sale of surplus lines insurance.

Compiler's Comments

2019 Amendment: Chapter 48 deleted former (2)(a)(iii) that read: "(iii) the insurance is not procured for the purpose of securing:

(A) a lower premium rate than would be accepted by an authorized insurer unless the premium rate quoted by the authorized insurer is at least 10% higher and at least $1,500 greater than the premium rate quoted by the unauthorized insurer; or

(B) an advantage in terms of the insurance contract"; in (2)(b) in introductory clause substituted current text providing that a producing insurance producer is not required to satisfy search requirements for former text that read: "A contract of insurance may not be placed with an unauthorized insurer under subsection (2)(a)(iii)(A) unless"; inserted (2)(b)(i) concerning the quoted premium rate; in (2)(c) in introductory clause substituted current text providing that a producing insurance producer is not required to satisfy search requirements for former text that read: "A surplus lines insurance producer placing coverage with an eligible surplus lines insurer for an exempt commercial purchaser is not required to satisfy the search requirements in subsection (2)(a) if"; inserted (2)(c)(i) concerning exempt commercial purchasers; in (2)(c)(ii) and (2)(c)(iii) substituted "producing insurance producer" for "surplus lines insurance producer"; and made minor changes in style. Amendment effective March 7, 2019.

2015 Amendment: Chapter 50 inserted (2)(a)(ii)(C) regarding natural disaster multiperil insurance. Amendment effective February 25, 2015.

2011 Amendment: Chapter 350 inserted (1) concerning applicability of statutory and regulatory requirements of the home state of the insured; in (2) inserted introductory language concerning conditions when Montana is the home state; in (2)(a)(ii) at end inserted "as evidenced by one of the following"; inserted (2)(a)(ii)(B) concerning current approved risk list; in (2)(b) near middle after "unless the unauthorized insurer" substituted "is eligible under 33-2-307" for "is the equivalent of A-rated or better"; inserted (2)(c) concerning an exemption from the requirements of subsection (2)(a) for surplus lines insurance producers; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2005 Amendment: Chapter 191 in (1)(d)(i) after first "insurer" inserted "unless the premium rate quoted by the authorized insurer is at least 10% higher and at least $1,500 greater than the premium rate quoted by the unauthorized insurer"; inserted (2) setting out conditions regarding permissible placement of a contract of insurance with an unauthorized insurer; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 379 at beginning substituted "A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with" for "Insurance may be procured through a licensed surplus lines insurance producer from"; and at end of (2) inserted "or, in the case of a renewal, the line of insurance has not become available from an authorized insurer".

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 substituted present (2) regarding failure to obtain insurance for former language that read: "the full amount or kind of insurance cannot be obtained from authorized insurers. The full amount or kind of insurance may be procured from an eligible surplus lines insurer if the insurance producer makes a diligent search among the insurers who are authorized to transact and are actually transacting the particular kind and class of insurance in this state and cannot obtain the full amount or kind of insurance from an authorized insurer"; inserted (3) requiring a diligent effort to place the business with a minimum of insurers; and made minor changes in style.

1989 Amendments: Chapter 285 in (2), near end, substituted "transacting" for "writing".

Chapter 713 substituted references to surplus lines insurance producer for references to surplus lines agent and references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: Substituted introductory clause, (1), referring to eligible surplus lines insurer, and (2), requiring inability to obtain full amount or kind of insurance from authorized insurers, for former (1) that read: "(1) If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines", may be procured from unauthorized insurers subject to the following conditions:

(a) The insurance must be procured through a licensed surplus line agent.

(b) The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from a majority of the insurers authorized to transact that kind and class of insurance in this state, and the amount of insurance placed in an unauthorized insurer shall be only the excess over the amount procurable from authorized insurers"; deleted former (2) that required a surplus line agent to file an affidavit relating to compliance with this section; inserted (4) referring to all other requirements of this part; and made minor changes in grammar.

33-2-303. Filing and endorsement of contract — submission form.

Compiler's Comments

2011 Amendment: Chapter 350 in (1) near end inserted "along with a submission form prescribed by the commissioner by rule"; inserted (1)(a) concerning filing with commissioner; in (1)(b) substituted current language concerning clearinghouse for "the commissioner, or with the surplus lines advisory organization formed pursuant to 33-2-321, and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer's license No. ....." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent""; inserted (2) and (3) concerning submission form for reporting surplus lines transactions; in (4) inserted first sentence concerning endorsement and in last sentence inserted "insurance"; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

1989 Amendments: Chapter 285 in first sentence, after "commissioner", inserted "or with the surplus lines advisory organization formed pursuant to 33-2-321" and after "under" inserted "surplus lines"; and made minor change in phraseology.

Chapter 713 substituted "surplus lines insurance producer" for "agent"; substituted "surplus lines producer" for "surplus lines agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: Substituted "lines" for "line" throughout section, required filing with Commissioner, inserted noncoverage on insolvency language, and made minor changes in grammar.

33-2-304. Surplus lines insurance valid.

Compiler's Comments

1987 Amendment: Substituted "surplus lines insurance" for "surplus line coverages".

33-2-305. Licensing of surplus lines insurance producer — license fee.

Compiler's Comments

2011 Amendment: Chapter 350 in (1) near beginning inserted "Montana is the home state of the insured" and near middle substituted "must" for "the person placing the contract must be licensed as a property and casualty insurance producer and"; in (2) substituted current language for "The commissioner shall issue a surplus lines insurance producer's license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has"; in (3) inserted introductory language concerning persons applying for license; in (3)(b) inserted "and manner"; inserted (4) concerning compliance with 33-17-401; inserted (8) concerning independently procured insurance; inserted (9) concerning participation in national database; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2009 Amendments — Composite Section: Chapter 271 in (4) and (4)(a) substituted reference to business entity for reference to corporation; and in (4)(a) and (4)(b) substituted "business entity's license" for "corporate license". Amendment effective July 1, 2009.

Chapter 313 in (1) at beginning substituted "If a person places" for "A person may not place" and near middle after "insurer" substituted "the person placing the contract must be" for "unless the person is"; deleted former (2)(c) that read: "(c) been licensed as a property and casualty insurance producer continuously for 5 years or more"; in (4), in two places in (4)(a), and in (4)(b) substituted reference to business entity for reference to corporation; and made minor changes in style. Amendment effective July 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

2005 Amendment: Chapter 469 in (2)(a) before "fee" deleted "annual"; and in (2)(b) after "application" substituted "in a form approved" for "on a form supplied". Amendment effective October 1, 2005.

2003 Amendment: Chapter 427 in (2) in introductory clause after "lines insurance" inserted "producer's"; deleted former (2)(d) that read: "(d) filed with the commissioner and, for as long as the license remains in effect, kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice of termination"; in (3) substituted provisions concerning license renewal for former language that read: "The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license"; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

1995 Amendment: Chapter 379 in (1), near beginning after "not", substituted "place" for "procure"; and inserted (5) concerning intermediaries holding surplus lines insurance producer's licenses.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 in (1), (2), and (2)(c), after "casualty", deleted "and surety"; and made minor changes in style.

1991 Amendment: In (1), near middle before "property", deleted "resident".

Severability: Section 5, Ch. 180, L. 1991, was a severability clause.

1989 Amendments: Chapter 285 in (1), at beginning, substituted "A person" for "An agent licensed by this state"; in (2), in introductory clause after "surplus lines" and before "agent", inserted "insurance"; in (2)(d), in second sentence before "agent", inserted "insurance" and at end substituted "in 33-2-311" for "by such law"; in (4), in introductory clause, changed "resident surplus lines agent" to "licensed as a surplus lines agent"; in (4)(b) substituted "insurance" for "business"; and made minor change in phraseology.

Chapter 713 substituted references to surplus lines insurance producer for references to surplus lines agent and references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: Substituted (1), listing licensing requirements for surplus lines agents, (2), referring to issue of surplus lines license to resident agents, and (2)(a), referring to annual fee, for former introductory clause, (1), and (2) that read: "Any person, while licensed as a resident insurance agent of this state as to property, casualty, and surety insurances and who is deemed by the commissioner to be qualified therefor by insurance experience and to be trustworthy, may be licensed as a surplus line agent as follows:

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner.

(2) License fee in the amount stated in 33-2-708 shall be paid to the commissioner. The license shall expire on the April 1 next after its date of issue"; in (2)(d) increased bond amount from $2,000 to $10,000, substituted "Surplus Lines" for "Surplus Line", and substituted last sentence for "The bond shall not be terminated unless at least 30 days' prior written notice thereof is filed with the commissioner"; inserted (3) referring to expiration and renewal of license; inserted (4) referring to a corporate license; and made minor changes in grammar and phraseology.

33-2-306. Surplus lines insurance producer's authority under license — acceptance of business from other insurance producers.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 271 in (2) near middle after "individual" substituted "or business entity" for "partnership, or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 313 in (2) near middle substituted "or business entity" for "partnership, or corporation" and at end substituted "provide compensation for the service, notwithstanding 33-17-1103" for "compensate him therefor"; and made minor changes in style. Amendment effective July 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1991 Amendment: Deleted former (3)(b) allowing collection of a placement fee of 0.5% to cover costs of issuing and servicing the policy.

Severability: Section 5, Ch. 180, L. 1991, was a severability clause.

1989 Amendments: Chapter 285 in (1), near end, inserted "a surplus lines"; in (2), near beginning before "agent", inserted "insurance" and after "insurer" inserted "or if the commissioner agrees in advance, through an individual, partnership, or corporation that has not been appointed as an insurance agent in this state"; inserted (3)(a) relating to a risk inspection fee; and made minor changes in phraseology.

Chapter 713 substituted references to surplus lines insurance producer for references to surplus lines agent and references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: Throughout (1) and (2) substituted "lines" for "line" and made minor changes in grammar and phraseology; and inserted (3) allowing collection of placement fee.

33-2-307. Requirements for eligible surplus lines insurers — list of eligible surplus lines insurers.

Compiler's Comments

2021 Amendment: Chapter 471 in (3) at end substituted "Quarterly Listing of Alien Insurers" for "Non-Admitted Insurers Quarterly Listing". Amendment effective July 1, 2021.

2019 Amendment: Chapter 410 in (4) at end of first sentence inserted "for a range of risks, including disability income insurance"; and made minor changes in style. Amendment effective July 1, 2019.

2011 Amendment: Chapter 350 in (1) at beginning inserted "If an unauthorized insurer is domiciled in any state"; substituted (1)(a) concerning authorization for "(a) has established satisfactory evidence of good reputation and financial integrity;

(b) is qualified under one of the following subsections:

(i) the insurer"; in (1)(b)(ii) inserted "market availability" and substituted "$4.5 million" for "$7 million"; in (2) substituted current language for former (1)(b)(ii) through (2) (see 2011 Session Law for former text)

; in (3) at beginning substituted "A list of eligible surplus lines insurers must be published" for "In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published"; deleted former (4) (see 2011 Session Law for former text)

; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2003 Amendment: Chapter 380 near beginning of (1)(b)(i)(B) in two places substituted "$15 million" for "$10 million". Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 near beginning of (1)(b)(i)(B) in two places substituted "$10 million" for "$7 million"; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 531 in (1)(b)(i)(B), near middle of second sentence and at end of fourth sentence, increased capital and surplus amount from $6 million to $7 million; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 379 in (1)(b)(i)(B), at beginning, substituted "$7 million" for "$3 million", in first full sentence substituted "$6 million" for "$4 million", and in last sentence substituted "$6 million" for "$3 million"; and in (1)(b)(ii), after "similar", substituted "group including incorporated and unincorporated alien insurers" for "unincorporated group of alien individual insurers" and inserted second sentence concerning incorporated members' involvement in business other than underwriting and solvency regulation and control of incorporated members.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 in first sentence of (1)(b)(i)(B) substituted "$3 million" for "$2.5 million on April 17, 1988, and $3.5 million on April 17, 1990. After April 17, 1990" and in second sentence, after "$4 million", substituted "capital" for "subcapital"; and made minor changes in style.

1989 Amendment: Substituted references to surplus lines insurance producer for references to surplus lines agent. Amendment effective January 1, 1990.

1987 Amendment: Substituted present language (see 1987 Session Law for text) for former language that read: "A surplus line agent shall not knowingly place surplus line insurance with insurers unsound financially. The agent shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The agent shall so insure only either:

(1) with an insurer which is an authorized insurer in at least one state of the United States for the kind of insurance involved and which meets the requirements of 33-2-109 and 33-2-110, as applicable; or

(2) with an alien insurer, other than one qualified under (1) above, which has an established and effective trust fund of at least $1 million within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States."

1981 Amendment: Substituted "meets the requirements of 33-2-109 and 33-2-110, as applicable" for "if a stock insurer, has capital stock and surplus of at least $350,000 or, if any other type of insurer, has surplus of at least $350,000" in (1); increased the amount in (2) from $400,000 to $1 million.

33-2-308. Evidence of insurance — changes.

Compiler's Comments

2017 Amendment: Chapter 396 deleted former (4) that read: "(4) A surplus lines insurance producer who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of a material change with respect to the insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) is guilty of a violation of this code and upon conviction is subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law"; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendments: Chapter 285 in (2) and two times in (3), before "agent", inserted "surplus lines"; and made minor changes in phraseology.

Chapter 713 throughout section substituted "insurance producer" for "agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: Throughout section substituted "lines" for "line" and before "certificate" inserted "cover note or"; in (1), in first sentence, after "the insured", inserted "or the producing agent"; inserted (5) prohibiting issuance or delivery of evidence of insurance unless agent has authority to insure or has information that insurance has been granted; and made minor changes in grammar.

33-2-309. Liability of insurer as to losses and unearned premiums.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendments: Chapter 285 in (1), near end before "agent", inserted "surplus lines"; and made minor changes in phraseology.

Chapter 713 throughout section substituted "insurance producer" for "agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: Throughout section substituted "lines" for "line"; inserted (2) making payment to agent payment to insurer; and made minor changes in grammar and phraseology.

33-2-310. Records — tax and fee statement.

Compiler's Comments

2011 Amendment: Chapter 350 in (2) substituted current text in introduction and (2)(a) for former text that read: "Prior to April 1 of each year, the surplus lines insurance producer shall file with the commissioner a statement for the preceding calendar year showing:

(a) name and address of each insured for whom surplus lines insurance was procured"; inserted (2)(b) concerning a description of the risk or exposure insured; deleted former (3) that read: "(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of the efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that the producer has expressly advised the insured prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage"; inserted (3) concerning insurance transaction reporting; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendments: Chapter 285 in (1), near middle after "issued", inserted "or delivered"; in (2), in introductory clause, inserted "surplus lines"; deleted former (2)(h) that read: "(h) the application and any correspondence from the surplus lines insurer or its representative"; in (3), in third sentence of introductory clause after "the insured", deleted "in writing"; and made minor changes in phraseology.

Chapter 713 substituted references to surplus lines insurance producer for references to surplus lines agent and references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: In (1), near beginning, substituted "lines" for "line", near end of first sentence inserted "policy" and "cover note, or other evidence of insurance", and near end substituted "surplus lines insurance" for "coverage"; in (2)(a) substituted "lines" for "line"; in (2)(b) substituted "the surplus lines" for "such"; in (2)(c) substituted "surplus lines insurance policy" for "such coverage"; inserted (2)(f) referring to tax and sums to be collected from insurer; inserted (2)(g) referring to producing agent; inserted (2)(h) referring to application and correspondence from insurer; and inserted (3) requiring affidavit from producing and surplus lines agents.

Administrative Rules

ARM 6.6.2810 Annual statement.

33-2-311. Tax on surplus lines insurance.

Compiler's Comments

2015 Amendment: Chapter 223 in (1) in middle inserted "or fees imposed by the surplus lines insurance producer pursuant to 33-2-320"; and made minor changes in style. Amendment effective July 1, 2015.

Applicability: Section 6, Ch. 223, L. 2015, provided: "[This act] applies to surplus lines insurance transactions on or after July 1, 2015."

2011 Amendment: Chapter 350 in (1) in first sentence inserted exception clause and substituted "the surplus lines insurance producer shall collect from the insured and pay to the commissioner a tax" for "There is imposed", at end of first sentence deleted "a tax at the same rate and", in second sentence inserted "The amount of premiums collected and the tax rate must be", in third sentence substituted "tax and fee" for "annual", substituted "33-2-310" for "33-2-310(2)", and substituted "reporting period as well as the stamping fee on the premium payable by the insured regardless of whether the coverage includes risks or exposures partially located or to be performed in another state" for "calendar year", and deleted last sentence that read: "If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in this state"; inserted (2) and (3) concerning the collection of any tax or stamping fee; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to surplus lines insurance producer for references to surplus lines agent. Amendment effective January 1, 1990.

1987 Amendments: Chapter 537 throughout section substituted "lines" for "line" and made minor changes in grammar and phraseology.

Chapter 622 near middle of first sentence, before "33-2-705", deleted "subsection (2)(b)(i) of".

33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 157, L. 2023. Amendment effective April 19, 2023.

2011 Amendment: Chapter 350 in (1) in first sentence substituted "producer or an insured that independently procured insurance that fails to file the tax and fee statement" for "producer who fails to make and file the annual statement", substituted "30 calendar days after the due date established by the commissioner by rule" for "with April 1", and in third sentence inserted "commissioner, forwarded to the"; in (2) inserted "or an insured that independently procured insurance" and after "the commissioner" deleted "or the surplus lines advisory organization formed pursuant to 33-2-321"; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

1993 Amendment: Chapter 451 near beginning of (2), after "in 33-2-321", deleted "before it is due"; and made minor changes in style.

1989 Amendments: Chapter 285 inserted (2) relating to penalty for failure to timely pay the stamping fee; and made minor change in phraseology.

Chapter 713 substituted references to surplus lines insurance producer for references to surplus lines agent. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendments: Chapter 537 throughout section substituted "lines" for "line" and made minor changes in grammar.

Chapter 557 in third sentence, after "collected", inserted "unless collected by a justice's court".

33-2-313. Revocation or suspension of license.

Compiler's Comments

2011 Amendment: Chapter 350 in (1)(a) substituted "a tax and fee statement" for "an annual statement" and after "the tax" inserted "and fee"; and in (1)(c) substituted "submission form" for "affidavit" and substituted "33-2-310" for "33-2-310(3)". Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2001 Amendment: Chapter 227 in (2) near beginning after "revocation" substituted "or refusal to license or renew a license or for imposing a fine on an insurance producer or applicant apply to the suspension, revocation, or refusal to license or renew a license or to imposing a fine on a surplus lines insurance producer or applicant" for "of insurance producer licenses apply to suspension or revocation of a surplus lines insurance producer license"; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendment: Chapter 451 deleted former (1)(d) and (1)(e) that read: "(d) if the insurance producer removes the resident surplus lines insurance producer office from this state;

(e) if the insurance producer removes the resident surplus lines insurance producer office accounts and records from this state during the period during which the accounts and records are required to be maintained under 33-2-310(1)"; in (1)(d), before "surplus lines", deleted "resident"; and made minor changes in style.

1989 Amendment: Substituted references to surplus lines insurance producer for references to surplus lines agent and references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: In (1) and (2) substituted "lines" for "line"; in (1)(c) substituted "33-2-310(3)" for "33-2-302(2)"; inserted (2)(d) referring to removal of office from state; inserted (2)(e) referring to removal of accounts and records from state; inserted (2)(f) referring to closure of office; inserted (2)(g) referring to violation of part; and made minor changes in grammar and phraseology.

33-2-314. Actions against insurer — venue.

Compiler's Comments

1987 Amendment: Substituted "surplus lines insurance policy" for "surplus line coverage", substituted "part is considered" for "surplus line insurance law shall be deemed", and substituted "unauthorized insurer" for "unlicensed insurer".

33-2-315. Service of process.

Compiler's Comments

2019 Amendment: Chapter 60 in (1) substituted "designate a registered agent with the commissioner as provided in 33-1-605" for "in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing"; and in (2) substituted "pursuant to 33-1-605 or 33-1-606" for "upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603". Amendment effective July 1, 2019.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

1987 Amendment: In the first sentence of (1) substituted "Every surplus lines insurer before transacting surplus lines insurance under this part" for "Every surplus line insurer before insuring as such under this law"; and made minor changes in grammar.

33-2-316. Rules.

Compiler's Comments

2011 Amendment: Chapter 350 deleted former (3) that read: "(3) establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus Lines Insurance Law"; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2001 Amendment: Chapter 227 at end deleted former (2) that read: "(2) The rules adopted pursuant to subsection (1) are subject to the procedures and carry the penalty provided by 33-1-313"; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendments: Chapter 285 in (1), after "make", deleted "or may approve and adopt"; in (1)(c) substituted "the surplus lines advisory organization formed pursuant to 33-2-321" for "any voluntary organization of surplus lines insurance agents"; in (2) inserted "adopted pursuant to subsection (1)"; and made minor changes in phraseology.

Chapter 713 in (1)(c) substituted "producers" and "insurance producers" for "agents"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: In (1) substituted "part" for "surplus line insurance law"; in (1)(b) and (1)(c) substituted "lines" for "line"; and made minor changes in phraseology.

Administrative Rules

Title 6, chapter 6, subchapter 28, ARM Surplus lines insurance transactions.

33-2-317. Exemptions.

Compiler's Comments

2011 Amendment: Chapter 350 deleted former (2) that read: "(2) insurance on subjects located, residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state"; and made minor changes in style. Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

1997 Amendment: Chapter 531 in (1), after "wet marine", substituted "insurance" for "and transportation insurances".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1989 Amendments: Chapter 285 in introductory clause, after "surplus lines insurance law", deleted "controlling the placement of insurance with unauthorized insurers"; and made minor changes in phraseology.

Chapter 713 at end of introductory clause substituted "producer" for "agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

1987 Amendment: Near beginning substituted "lines" for "line" and made minor changes in grammar.

33-2-318. Exempt commercial purchaser defined.

Compiler's Comments

Effective Date: Section 20, Ch. 350, L. 2011, provided: "[This act] is effective on passage and approval." Approved May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

33-2-319. Qualified risk manager defined.

Compiler's Comments

Effective Date: Section 20, Ch. 350, L. 2011, provided: "[This act] is effective on passage and approval." Approved May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

33-2-320. Surplus lines insurance producer fee.

Compiler's Comments

Effective Date: Section 5, Ch. 223, L. 2015, provided that this section is effective July 1, 2015.

Applicability: Section 6, Ch. 223, L. 2015, provided: "[This act] applies to surplus lines insurance transactions on or after July 1, 2015."

33-2-321. Stamping fee and clearinghouse processing fee.

Compiler's Comments

2011 Amendment: Chapter 350 substituted current language concerning stamping fee for former section (see 2011 Session Law for former text). Amendment effective May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

2001 Amendment: Chapter 184 in (5)(a) at beginning of first sentence substituted "If a surplus lines advisory organization is performing functions as provided in subsection (1), it" for "The surplus lines advisory organization" and at end of third sentence inserted "in connection with performing the functions set forth in subsection (1)"; inserted (5)(b) authorizing commissioner to collect stamping fees if a surplus lines advisory organization is not operating as required; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendments: Chapter 285 throughout section, before "advisory organization", inserted "surplus lines"; inserted (5) relating to establishment, collection, and use of a stamping fee; and made minor changes in phraseology.

Chapter 713 substituted references to surplus lines insurance producer for references to surplus lines agent and references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1989 Statement of Intent: The statement of intent attached to Ch. 285, L. 1989, provided: "A statement of intent is required for this bill because the amendment to 33-2-321 grants rulemaking authority to the insurance commissioner to set a stamping fee, not to exceed 1%, that may be collected by a surplus lines advisory organization. It is intended that the insurance commissioner set the stamping fee at an amount that will generate enough income to pay the expenses incurred by the surplus lines advisory organization. It is intended that the insurance commissioner will by rule adjust the amount of the stamping fee as surplus lines advisory organizations' needs change and as the amount of transactions change."

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

33-2-323. Authorization for agreements with other state regarding multistate risks.

Compiler's Comments

Effective Date: Section 20, Ch. 350, L. 2011, provided: "[This act] is effective on passage and approval." Approved May 6, 2011.

Severability: Section 19, Ch. 350, L. 2011, was a severability clause.

Applicability: Section 21, Ch. 350, L. 2011, provided: "[This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011."

33-2-324. Insurance presumed unobtainable from authorized insurers.

Compiler's Comments

Effective Date: Section 57, Ch. 157, L. 2023, provided that this section is effective on passage and approval. Approved April 19, 2023.

33-2-326. Penalties.

Compiler's Comments

2003 Amendment: Chapter 380 at end after "is" substituted reference to penalties and procedures in 33-1-317 and 33-1-318 for "guilty of a misdemeanor and shall be fined not more than $1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both". Amendment effective October 1, 2003.

1989 Amendment: Substituted references to surplus lines insurance producer for references to surplus lines agent. Amendment effective January 1, 1990.

Administrative Rules

ARM 6.6.2808 Eligible surplus lines insurers list.

Part 4
Standard Valuation

33-2-401. Short title.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-402. Definitions.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-403. Valuation for policies.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

33-2-404. Principle-based valuation.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

33-2-405. Experience reporting.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-406. Confidentiality — definitions.

Compiler's Comments

2015 Amendment — Coordination: Section 69, Ch. 348, L. 2015, a coordination section, in (1) substituted "is confidential information as provided in 2-6-1002 and privileged, is not subject to subpoena or discovery, and is not admissible" for "is confidential and privileged and is not subject to subpoena, discovery, or public information requests under 2-6-102 or admissible". Amendment effective October 1, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-407. Standard valuation of reserve liabilities law.

Compiler's Comments

2021 Amendment: Chapter 471 inserted (6)(b) concerning the requirement to include in the opinion required in subsection (6)(a) an opinion by the same qualified actuary on whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual make adequate provision for the company's obligations under the policies and contracts and the required considerations for that opinion; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 370 in (1) in first sentence near middle substituted "issued on or before the operative date of the valuation manual" for "and may certify the amount of any reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of reserves" and in second sentence inserted "under this subsection"; inserted (2) relating to commissioner's valuation of reserve liabilities; in (3) at end substituted "provided in this part" for "provided in this section and if the official of the other state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction"; in (4) in first sentence substituted "minimum standards provided in this part" for "minimum standard provided in this section", in second sentence substituted "an appointed actuary" for "a qualified actuary", and near end substituted "subsections (5) and (6)" for "subsection (4)"; in (5)(a) near beginning after "in this state" inserted "prior to the operative date of the valuation manual"; in (5)(b) in first sentence following "commissioner by rule" deleted: "when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts" and inserted second sentence relating to assets held by an insurer; deleted former (4)(d)(ix) and (5) (see 2015 Session Law for former text) ; inserted (6) relating to annual submissions of a qualified actuary; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1999 Amendment: Chapter 472 in (4)(d)(ix) near middle of first sentence before "subject" inserted "not". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1995 Amendment: Chapter 379 in (1), at end, deleted "In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States"; in (2), at beginning, deleted "For the purpose of making such valuation, the commissioner may employ a competent actuary who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such valuation and it may be received by the commissioner upon satisfactory proof of its correctness"; in (3) inserted second sentence concerning the holding of additional reserves as the adoption of a higher standard of valuation; inserted (4) concerning the annual submission by life insurers of an actuary's opinion, the content of the opinion, establishment of rules governing the opinion, failure to submit an opinion, and confidentiality of the opinion and supporting material; inserted (5) defining qualified actuary; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

Administrative Rules

Title 6, chapter 6, subchapter 65, ARM Actuarial opinion.

Title 6, chapter 6, subchapter 67, ARM Valuation of life insurance policies.

33-2-408. Contracts prior to the operative date of 33-20-213 — valuation.

Compiler's Comments

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

33-2-409. Contracts on or after operative date of 33-20-213 and prior to operative date of valuation manual — valuation.

Compiler's Comments

2015 Amendment: Chapter 370 in (1), (2), (2)(a)(ii), and (2)(a)(iv) inserted language related to policies issued prior to operative date of the valuation manual; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

2005 Amendment: Chapter 469 in (2)(a)(ii)(B) at beginning after "election of the" substituted "insurer" for "company" and after "specified" substituted "policies" for "plans"; in (2)(a)(ii)(C) after "after" substituted "2001" for "1980"; inserted (2)(a)(iii) establishing the standard for policies issued on or after January 1, 2005, and before January 1, 2009; inserted (2)(a)(iv) establishing the standard for policies issued after January 1, 2009; in (2)(f)(i)(B) after "1966" substituted "a table referenced in subsection (2)(f)(i)(A)" for "either such table"; and made minor changes in style. Amendment effective April 28, 2005.

Retroactive Applicability: Section 42, Ch. 469, L. 2005, provided: "[Section 4] [33-2-523, renumbered 33-2-409] applies retroactively, within the meaning of 1-2-109, to January 1, 2005."

1997 Amendment: Chapter 42 in (2) substituted "33-2-526(3) and (4)" for "32-2-526(3) and (4)" [renumbered 33-2-412]. Amendment effective March 12, 1997.

1995 Amendment: Chapter 379 in (2), near beginning of first sentence after "33-2-525", inserted "and 33-2-537(2)" and after "contracts" inserted remainder of first sentence concerning standard of laws in effect prior to October 1, 1995, and at beginning of second sentence inserted exception clause and language concerning minimum standard valuation, after "33-2-526(3) [renumbered 33-2-412]" inserted "and (4), and 33-2-537", near middle, after "case of", inserted "life insurance", and after "1979" inserted "5 ½% interest for single-premium life insurance policies"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1983 Amendment: In (2) in lead-in, after "33-2-524" inserted "and 33-2-525"; in (2)(a)(i) after "that operative date" inserted "but prior to January 1, 1989"; inserted (2)(a)(ii) listing valuation methods for ordinary policies of life insurance issued on the standard basis that are issued on or after January 1, 1989; in (2)(b) after "as amended, and" deleted "the commissioner's 1961 standard industrial mortality table" and after "that operative date" inserted remainder of subsection referring to the Commissioner's 1961 table and any table adopted after 1980 by the National Association of Insurance Commissioners; in (2)(e)(i)(A) after "benefit" inserted language from "or any tables" through end of subsection; and in (2)(f)(i)(A) after "1959 accidental death benefits table" inserted language from "or any accidental" through end of subsection.

Statement of Intent: The statement of intent attached to HB 572 (Ch. 520, L. 1983) provided: "A statement of intent is required for this bill in that it delegates rulemaking authority to the commissioner of insurance in sections 1 [33-2-523, renumbered 33-2-409], 2 [33-2-524, renumbered 33-2-410], and 6 [error, should be "8", codified at 33-2-536, now repealed].

Although 33-1-313, MCA, delegates to the commissioner of insurance rulemaking authority to effectuate any provisions of the Code, as this bill substantially increases this power, a statement of intent is required.

Section 1 [33-2-523, renumbered 33-2-409] empowers the commissioner of insurance to approve new tables as the minimum standard for reserve calculations for life insurance policies and annuity contracts.

Section 2 [33-2-524, renumbered 33-2-410] empowers the commissioner of insurance to approve new tables as the minimum standard for reserve calculations for annuity and pure endowment contracts.

Section 6 [33-2-536, now repealed] allows the insurance commissioner to promulgate regulations pertaining to the calculation of reserves for insurance policies and annuity contracts not included in the original Valuation Law."

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

Administrative Rules

ARM 6.6.7101 Recognition of preferred mortality tables for use in determining minimum reserve liabilities — authority.

33-2-410. Individual and group annuity and pure endowment contracts — valuation.

Compiler's Comments

1983 Amendment: In (1), inserted proviso at beginning of subsection; in (1)(b) and (1)(c) after "1971 individual annuity mortality table" inserted clause relating to any individual annuity mortality table adopted after 1980 beginning with "or any" through "for such contracts"; and in (1)(e) inserted clause relating to any group annuity mortality table adopted after 1980 beginning with "or any" through "and pure endowments"; and made minor changes in phraseology.

Statement of Intent: The statement of intent attached to HB 572 (Ch. 520, L. 1983) provided: "A statement of intent is required for this bill in that it delegates rulemaking authority to the commissioner of insurance in sections 1 [33-2-523, renumbered 33-2-409], 2 [33-2-524, renumbered 33-2-410], and 6 [error, should be "8", codified at 33-2-536, now repealed].

Although 33-1-313, MCA, delegates to the commissioner of insurance rulemaking authority to effectuate any provisions of the Code, as this bill substantially increases this power, a statement of intent is required.

Section 1 [33-2-523, renumbered 33-2-409] empowers the commissioner of insurance to approve new tables as the minimum standard for reserve calculations for life insurance policies and annuity contracts.

Section 2 [33-2-524, renumbered 33-2-410] empowers the commissioner of insurance to approve new tables as the minimum standard for reserve calculations for annuity and pure endowment contracts.

Section 6 [33-2-536, now repealed] allows the insurance commissioner to promulgate regulations pertaining to the calculation of reserves for insurance policies and annuity contracts not included in the original Valuation Law."

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

Administrative Rules

Title 6, chapter 6, subchapter 53, ARM Annuity mortality tables.

33-2-411. Commissioner's reserve valuation method.

Compiler's Comments

2015 Amendment: Chapter 370 inserted (4)(c) relating to the commissioner's reserve valuation method. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1995 Amendment: Chapter 379 in (1), after "33-2-526(3)", inserted "and (4), and 33-2-537(2)"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1983 Amendment: Inserted (2) pertaining to life insurance policies issued on or after January 1, 1987.

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

33-2-412. Limits — options — minimum reserves.

Compiler's Comments

2015 Amendment: Chapter 370 in (1)(a) near middle inserted "and prior to adoption of the valuation manual by the commissioner by rule"; and inserted (1)(b) relating to reserve valuation methods determined by the commissioner. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1995 Amendment: Chapter 379 in (1), after "benefits", inserted "issued on or after October 1, 1995" and after "33-2-525" inserted "33-2-537(2)"; inserted first sentence in (2) concerning calculation of reserves for policies and contracts issued prior to October 1, 1995, and in second sentence, after "commissioner", inserted "issued on or after October 1, 1995"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1983 Amendment: In (3), inserted last sentence referring to 33-2-524 and 33-2-527; and inserted (4) referring to life insurance policies issued after December 30, 1986.

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

33-2-413. Interest rates — determination of minimum standard valuation.

Compiler's Comments

2015 Amendment: Chapter 370 in (1) at beginning inserted "For policies issued prior to the operative date of the valuation manual"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

33-2-414. Interest rate weighting factor.

Compiler's Comments

1995 Amendment: Chapter 379 in (1)(c), at end, substituted "subsections (1)(c)(i) through (1)(c)(iii) and the rules and definitions established in subsections (2) through (4)" for "subsection (2) and the type of plan established in subsection (3)"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

33-2-415. Reference interest rate.

Compiler's Comments

1995 Amendment: Chapter 379 throughout section substituted "Moody's monthly average composite yield on seasoned corporate bonds" for "Moody's corporate bond yield average—monthly average corporates"; in (2), near end after "approved by", inserted "rule promulgated by"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Source: Sections 33-2-521 through 33-2-529 (renumbered 33-2-407 through 33-2-415) were derived from the Standard Valuation Law, promulgated by the National Association of Insurance Commissioners and adopted in all states except Illinois, Kentucky, and Massachusetts.

33-2-416. Deposit of reserves — domestic life insurers.

Compiler's Comments

1999 Amendment: Chapter 304 in (4) substituted reference to chapter 2, part 5, and chapter 12 for reference to chapter 2, parts 5 and 8; in (5) substituted "33-12-207" for "33-2-832"; and made minor changes in style. Amendment effective July 1, 1999.

1995 Amendment: Chapter 379 in (1), at end, inserted "minus policy loans"; in (2), after "securities", inserted "or assets" and after "reserves" inserted "minus policy loans"; in (5), near beginning after "chattel mortgage loans", deleted "and policy loans"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1981 Amendment: In subsection (4), inserted "and valued" after "acquired", changed "part 8" to "parts 5 and 8", and deleted "except that securities acquired under 33-2-829 are not eligible for deposit" after "of this chapter" at the end of the subsection.

33-2-417. Reserve calculation — indeterminate premium plans — minimum standards for disability plans and accident and health plans.

Compiler's Comments

2015 Amendment: Chapter 370 in (2) after "disability plans" inserted text related to plans issued prior to the operative date of the valuation manual and accident and health plans; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1997 Amendment: Chapter 531 in (1)(b), at end, deleted "as determined by rules promulgated by the commissioner"; in (2), after "commissioner", substituted "may" for "shall"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-2-418. Rulemaking.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

Part 5
Assets and Liabilities — Reserves

33-2-501. Assets allowed.

Compiler's Comments

1995 Amendment: Chapter 379 in (11), in first sentence after "is", deleted "at least $100,000, which cost must be" and after "exceed" substituted "8" for "10" and in second sentence, after "However", deleted "with regard to life insurers, the equipment must be allowed as an asset if the cost of the equipment is at least $25,000, which cost must be amortized in full over a period of not to exceed 5 calendar years, and".

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 596 at end of (8) substituted "chapter 2, part 12" for "33-2-1205"; and made minor changes in style.

33-2-502. Assets expressly not allowed.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 304 at end of (4)(a) substituted "33-25-211" for "33-2-851"; in (4)(b) substituted reference to chapter 12 for reference to chapter 2, part 8, and substituted "33-12-207 or 33-12-307" for "33-2-831"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 472 inserted (6) disallowing prepaid expenses as assets; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-2-503. Treatment of assets.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-514. Reserve for disability insurance.

Compiler's Comments

1997 Amendment: Chapter 531 in (1), near end after "less than", deleted "the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than"; inserted (2) allowing the Commissioner to adopt rules; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

33-2-517. Title insurance reserves.

Compiler's Comments

1997 Amendment: Chapter 531 in (2), at beginning after "The", substituted "reserve sums required by subsection (1)" for "sums herein required to be reserved"; in (3) substituted second sentence requiring the insurer to make the reduction for the prior year or years for former second sentence that read: "In the event that any title insurer has not in accordance with subsection (1)(b) of this section reduced the amount of its unearned premium reserve by 5% of the amount originally assigned to the reserve pursuant to subsection (1)(a) of this section for years ending after December 31, 1958, and before January 1, 1977, the insurer shall effect such reduction for such prior years during its accounting year which includes December 31, 1976"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

33-2-518. Loss and loss expense reserves for property and casualty insurance.

Compiler's Comments

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

Part 6
Deposits

33-2-601. Authorized deposits of insurers.

Compiler's Comments

2011 Amendment: Chapter 227 in (2) substituted "required by" for "made pursuant to", substituted "a condition for the authority" for "requirement for authority", and at end deleted "in such state, province, or country"; deleted former (4) that read: "(4) deposits in such additional amounts as are permitted to be made under 33-2-609"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

33-2-603. Securities eligible for deposit.

Compiler's Comments

1999 Amendment: Chapter 304 at end of (1) substituted "following securities" for "any combination of securities of the kinds described in the following sections of this code: 33-2-811(1), 33-2-812, and 33-2-813"; inserted (1)(a) through (1)(c) listing types of eligible securities; and made minor changes in style. Amendment effective July 1, 1999.

33-2-604. Depositary or custodian.

Compiler's Comments

2013 Amendment: Chapter 169 in (1) at beginning after "office of the commissioner" deleted "in safe deposit", in middle substituted "The deposit must be made with a bank or trust company located in the state of Montana and" for "with an established safe deposit institution, bank, or trust company located in the city of Helena, state of Montana", and inserted last sentence concerning withholding or withdrawing approval; deleted former (2) that read: "(2) No safe deposit shall be used for any such deposit unless the box or compartment in which are kept the assets and securities comprising the deposit requires two separate and distinctly differing keys or one key and a combination, in the case of a box having a combination lock, to open the same. One of such keys or the combination shall at all times be kept by the commissioner, and the other key or the combination shall at all times be kept by the insurer. Such box or compartment shall not at any time be opened or remain open except through the joint action and in the presence of both the commissioner and a duly authorized officer or representative of the insurer"; in (2) in last sentence after "trust company" deleted "and are held in safe deposit or custody" and substituted "subsection (1)" for "subsections (1) and (2) of this section"; and made minor changes in style. Amendment effective April 9, 2013.

33-2-605. Record of deposits — liability of commissioner and state.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-606. Assignment or conveyance of assets or securities.

Compiler's Comments

2013 Amendment: Chapter 169 in two places after "to the commissioner" deleted "and the commissioner's successors in office" and substituted "33-2-604(2)" for "33-2-604(3)". Amendment effective April 9, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-607. Appraisal.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-611. Deficiency of deposit — revocation of certificate.

Compiler's Comments

2013 Amendment: Chapter 169 substituted "33-2-604(2)" for "33-2-604(3)"; before "certified mail" deleted "registered or"; and made minor changes in style. Amendment effective April 9, 2013.

33-2-612. Duration and release of deposit.

Compiler's Comments

2013 Amendment: Chapter 169 in (1) substituted "33-2-604(2)" for "33-2-604(3)"; and made minor changes in style. Amendment effective April 9, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted "part 13" for "part 9" in (4).

Part 7

Reports, Fees, and Taxes

33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 206 in (5) near beginning after "officer" substituted "agent" for "insurance producer" and at end substituted "$25,000 for each violation" for "$1,000"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 469 in (5) near beginning after "officer" deleted "insurance producer"; and made minor changes in style. Amendment effective October 1, 2005.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Effective Date — Applicability: Section 2, Ch. 206, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to all filings due on or after July 1, 2005."

1999 Amendments — Composite Section: Chapter 316 in (4) near beginning after "fee for" substituted "renewal" for "continuance"; deleted former (6) that read: "(6) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 472 in (2)(a) in first sentence after "electronic" deleted "diskette", at beginning of second sentence after "The" deleted "filing" and after "statement" substituted "electronic filing" for "diskette", and at beginning of third sentence after "The" deleted "filing", before "quarterly" inserted "submission of the", and after "statement" substituted "electronic filings" for "diskettes"; in (2)(a)(i) after "first" deleted "calendar"; in (2)(a)(ii) after "second" deleted "calendar"; in (2)(a)(iii) after "third" deleted "calendar"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1995 Amendment: Chapter 379 inserted (2) concerning the filing of electronic diskettes of financial statements by domestic insurers; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 596 inserted third and fourth sentences of (1) regarding the required form of the statement; at end of (3) inserted "or within an extension of time that the commissioner may grant"; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: Inserted (6) setting fine for failure to file annual statement.

33-2-704. Insured lives reporting requirement.

Compiler's Comments

1997 Amendment: Chapter 531 near beginning, after "before", substituted "March 1" for "February 15".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

Saving Clause: Section 16, Ch. 377, L. 1995, was a saving clause.

33-2-705. Report on premiums and other consideration — tax.

Compiler's Comments

2017 Amendment: Chapter 304 in (2)(a) substituted "subsections (2)(b) and (2)(c)" for "subsection (2)(b)"; inserted (2)(c) concerning annual dormancy tax; in (4) near beginning inserted "or the annual dormancy tax under 33-28-401"; and made minor changes in style. Amendment effective May 4, 2017.

2015 Amendment: Chapter 377 in (2)(a) at beginning inserted exception clause and near middle inserted reference to 33-2-709; inserted (2)(b) concerning premium tax on legal professional liability insurance; and made minor changes in style. Amendment effective April 30, 2015.

Preamble: The preamble attached to Ch. 377, L. 2015, provided: "WHEREAS, the application of Montana's premium tax rate of 2.75% and licensing fee of $1,900, together with the application of other states' retaliatory tax, fees, and licensing laws, unnecessarily impedes the growth and financial stability of Montana-domiciled legal professional liability insurers by requiring these Montana-domiciled insurers to pay higher taxes and fees to another state under the laws of the other state; and

WHEREAS, the imposition by other states of higher taxes and fees on Montana-domiciled legal professional liability insurers than are applied to those states' own domestic insurance companies that do business in their state unfairly discriminates against and hinders the growth and stability of these Montana-domiciled legal professional liability insurers and is contrary to the best interests of Montana; and

WHEREAS, the purpose of this act is to aid in the protection, growth, and stability of Montana-domiciled legal professional liability insurers that have a principal business office located in Montana and employ Montana residents but that derive substantial net direct premiums on account of policies covering subjects or risks located, resident, or to be performed in states or jurisdictions outside of Montana; and

WHEREAS, the state of Montana will benefit by supporting the growth and stability of Montana-domiciled legal professional liability insurance companies that have a principal business office located in Montana, employ Montana residents, and issue legal professional liabili

Retroactive Applicability: Section 5, Ch. 377, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014."

2009 Amendment: Chapter 309 deleted former (5) that read: "Insurers paying a premium tax under subsection (2) and holding a certificate pursuant to Title 90, chapter 10, may redeem the certificate under the terms of 90-10-304 as a credit against the premium tax after excluding the portion of premiums identified in subsection (3)"; and made minor changes in style. Amendment effective April 18, 2009.

2005 Amendment: Chapter 537 inserted (5) allowing insurers paying a premium tax and holding a certificate to redeem the certificate as a credit against the premium tax after excluding the portion of premiums; and made minor changes in style. Amendment effective July 1, 2005.

Severability: Section 21, Ch. 537, L. 2005, was a severability clause.

1995 Amendment: Chapter 379 in (6) substituted "annual interest rate of 12%" for "interest rate established in 31-1-107"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 in (6), after "$100", substituted "plus interest on the delinquent amount at the interest rate established in 31-1-107" for "a day for each day the tax remains unpaid past the due date or 1% of the amount owed in tax, whichever is greater"; and made minor changes in style.

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, near beginning of (4) substituted "taxes provided by this part" for "the premium tax provided by this section".

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Retroactive Applicability — Termination: Section 39(9), Ch. 15, Sp. L. July 1992, provided that this section applies to the tax year beginning after December 31, 1991. This section terminates upon receipt of taxes for the calendar year ending December 31, 1992.

1991 Amendment: In (1), in middle of first sentence after "received by", substituted "a life insurer or written by an insurer other than a life insurer" for "it".

1987 Amendment: In (1), in first sentence, deleted "(except as to wet marine and transportation insurance taxed under subsection (4) below)"; in (2) substituted tax computation at 2¾% for former method that provided: "This tax may be computed in either of the following ways:

(a) (i) A domestic insurer may choose to compute its tax based on the percentage of its admitted assets invested in Montana securities according to the following schedule:

(A) 2¾% of net premiums if the insurer has 0% of its admitted assets invested in Montana securities;

(B) 2¼% of net premiums if the insurer has at least 25% of its admitted assets invested in Montana securities;

(C) 1 ¾% of net premiums if the insurer has at least 50% of its admitted assets invested in Montana securities;

(D) 1 ¼% of net premiums if the insurer has at least 75% of its admitted assets invested in Montana securities; and

(E) 3/4% of net premiums if the insurer has 100% of its admitted assets invested in Montana securities.

(ii) "Admitted assets" are those assets allowed in 33-2-501.

(iii) An insurer choosing this method of computation must itemize its Montana securities on a detailed schedule attached to its annual tax report.

(b) (i) If the method provided for in subsection (2)(a) is not used, the insurer shall compute its tax at the rate of 2 ¾% of the net premiums.

(ii) An insurer choosing this method and having not less than 50% of its paid-in capital stock invested in Montana securities is allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section"; deleted former (3) and (4) that read: "(3) For the purpose of subsection (2):

(a) "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets; and

(b) "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, funds invested in certificates of deposit in a bank or building and loan association located in Montana and whose deposits are insured by an agency of the United States or an insurer approved by the department of commerce, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(4) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, authorized in 33-1-209, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of 3/4 of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (4) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts"; inserted (6) setting fine for failure to pay tax; and inserted (7) authorizing Commissioner to provide quarterly schedule by rule.

1987 Statement of Intent: The statement of intent attached to Ch. 622, L. 1987, provided: "A statement of intent is required for this bill because section 3 [33-2-705] grants the commissioner of insurance authority to adopt rules to provide for the quarterly payment of portions of the premium tax.

Currently the premium tax is paid by insurers once a year in March. The legislature recognizes the opportunity to collect the premium tax on a regular basis throughout the year and to generate additional income for the state by having this money available for investment. For this reason, the legislature grants the commissioner of insurance authority to adopt rules to establish a schedule for payment of portions of the premium tax during the year in which the tax liability is accrued.

The legislature intends that, in adopting rules, the commissioner of insurance establish payment schedules similar to the schedules used in other states. The legislature further intends that rules adopting a quarterly schedule for payment of the premium tax not create an undue burden on insurance companies by requiring excessively frequent payments. Lastly, it is the intent of the legislature that rules adopted under this act conform as much as possible to the laws, rules, and procedures of this state governing the budgeting, appropriation, and expenditure of state funds."

Applicability: Section 6, Ch. 622, L. 1987, provided: "This act applies to all premium income of an authorized insurer received after December 31, 1986."

1983 Amendments: Chapter 295, in middle of (3)(b), inserted "funds invested in certificates of deposit in a bank or building and loan association located in Montana and whose deposits are insured by an agency of the United States or an insurer approved by the department of commerce".

Chapter 518, in (4)(a), deleted "inland marine" after "wet marine" and after "33-1-209" deleted "and 33-1-221 through 33-1-229".

1981 Amendments: Chapter 303 substituted "the total charge" for "only the risk portion of the charge" in the third sentence from the end of (1).

Chapter 467, in (1), substituted reference to "subsection (4)" for "subsection (3)"; in (4)(a), inserted "inland marine," after "wet marine," and substituted "authorized in 33-1-209 and 33-1-221 through 33-1-229" for "as defined in 33-1-209".

Effective Date and Applicability: Section 5, Ch. 664, L. 1979, provided: "This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978." Approved May 8, 1979.

Not Codified: Section 40-2821(5)(part), R.C.M. 1947, providing that money owed under pre-1959 Montana Insurance Code to nonstate political entities before 1957 was still enforceable, was not codified in the MCA as obsolete. This clause has not been repealed and is valid law. Citation may be made to sec. 66, Ch. 286, L. 1959.

Effective Taxable Date — Not Codified: Section 40-2821(8), R.C.M. 1947, establishing an effective date of December 31, 1961, as taxable year for this section, was not codified in the MCA as temporary. This clause has not been repealed and is valid law. Citation may be made to sec. 66, Ch. 286, L. 1959.

Administrative Rules

Title 6, chapter 6, subchapter 27, ARM Periodic payment of premium taxes.

Case Notes

Revocation of License: An order by the Commissioner of Insurance to an insurance company to show cause why its license to do business in the state should not be revoked for the reason, among others, that it had not paid the license fee required by section 167, R.C.M. 1935 (since repealed), on particular premiums set forth in the order, was sufficient to confer jurisdiction upon him to hear the matter. State ex rel. Pearl Assurance Co. v. Holmes, 113 M 144, 124 P2d 700 (1942).

License Fee and Corporate License Tax Not in Conflict as Double Taxation: The license fee required of insurance corporations by section 40-1302, R.C.M. 1947 (since repealed), and that exacted by Title 15, ch. 31, did not constitute double taxation, the impositions, though upon the same persons, not being for the same thing. Equitable Life Assurance Co. v. Hart, 55 M 76, 173 P 1062 (1918).

33-2-707. Preemption of taxing.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-2-708. Fees and licenses.

Compiler's Comments

2017 Special Session Amendment: Chapter 6 in (3)(c) at end inserted "and are subject to legislative fund transfer". Amendment effective December 15, 2017, and terminates June 30, 2019.

Severability: Section 26, Ch. 6, Sp. L. November 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 63 in (1)(a) at beginning deleted "Except as provided in 33-17-212(2)" (partially reinserted pursuant to Ch. 377 amendment); and made minor changes in style. Amendment effective February 27, 2015.

Chapter 139 in (1)(c) inserted "an insurance public adjuster"; and made minor changes in style. Amendment effective March 30, 2015.

Chapter 377 in (1)(a) in exception clause inserted reference to subsection (5); inserted (5) concerning licensing fee for issuing legal professional liability policies; and made minor changes in style. Amendment effective April 30, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

Section 15, Ch. 139, L. 2015, was a severability clause.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Retroactive Applicability: Section 5, Ch. 377, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014."

2013 Amendment: Chapter 245 inserted (1)(b)(ix) regarding navigator certification; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 486 in (3)(b) decreased from 33% to 16.67% the percentage to be deposited in the special revenue account. Amendment effective July 1, 2009, and terminates June 30, 2013.

2008 Amendment by Initiative: Section 10, I.M. No. 155, proposed by initiative petition and approved at the general election held November 4, 2008, in (3)(a) at beginning inserted exception clause; inserted (3)(b) concerning deposit of funds in account established in 53-4-1115; and made minor changes in style. Amendment effective November 4, 2008.

2005 Amendment: Chapter 552 in (1) inserted (1)(b)(vi) relating to fees for viatical settlement broker's license; inserted (1)(b)(viii) relating to original notification fee for life insurance producer acting as viatical settlement broker; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 380 in (3) at end of first sentence inserted reference to 50-3-109; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 427 in (1)(b)(i)(B) substituted biennial renewal fee of $50 for annual renewal fee of $10; inserted (1)(b)(i)(C) establishing lapsed license reinstatement fee of $100; inserted (1)(b)(ii) establishing resident insurance producer's license lapsed license reinstatement fee of $100; in (1)(b)(iii)(B) substituted biennial renewal fee of $100 for annual renewal fee of $50; inserted (1)(b)(iii)(C) establishing lapsed license reinstatement fee of $200; inserted (1)(b)(iv) establishing various insurance adjuster's license fees; inserted (1)(b)(v) establishing various insurance consultant's license fees; inserted (1)(b)(vi) establishing various resident and nonresident rental car entity producer's license fees; inserted (1)(c) allowing the commissioner to adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license; and made minor changes in style. Amendment effective July 1, 2003.

The amendments to this section made by sec. 7, Ch. 427, L. 2003, were rendered void by sec. 25, Ch. 427, L. 2003, a coordination section.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

2001 Amendments — Composite Section: Chapter 227 in (3) at end of first sentence deleted "33-2-706"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 298 in (3) at end of first sentence inserted reference to 33-28-201; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 316 in (1) substituted current language for former fee schedules (see 1999 Session Law for text); in (2)(a) near beginning after "commissioner shall" substituted language allowing a charge of $75 for each course and limiting the charge to a sponsoring organization at not more than $1,500 for former text that read: "establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205"; inserted (2)(b) exempting insurers and associations from the statutory charge; deleted former (3) that read: "(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority"; in (3) at end of first sentence after "33-2-706" substituted "All other fees" for "and any fees and examination and miscellaneous charges that are" and in the second sentence near middle after "under Title 33" deleted "except that all fees for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205" and at end substituted "to the credit of the state auditor's office" for "pursuant to 33-17-1207"; deleted former (4)(b) that read: "(b) The accreditation fee required by subsection (3) and the annual renewal of license fee established in subsection (1)(f)(iv) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money and the renewal fee"; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date: Section 18, Ch. 316, L. 1999, provided: "[This act] is effective January 1, 2000, with the application and renewal fee in 33-2-708 being due March 1, 2000, for tax year 1999."

1997 Amendment: Chapter 70 in (4)(b), near beginning of first sentence after "(3)", inserted "and the annual renewal of license fee established in subsection (1)(f)(iv)" and at end of last sentence inserted "and the renewal fee". Amendment effective July 1, 1997.

1995 Amendments: Chapter 98 deleted former (1)(n) that provided for a $150 fee for reviewing an initial application for approval of prelicensing education courses and a $50 fee for periodic reviews of prelicensing education courses.

Chapter 379 in (1), after "collect", deleted "in advance"; inserted (1)(k) concerning motor club representative's license; in (1)(n)(iii) inserted "provided that all additional forms relate to the same policy"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Special Session Amendment: Chapter 6 in (1)(e)(ii) and (1)(f)(ii), after "insurer", inserted "electronically filed"; inserted (1)(e)(iii) establishing $15 fee for nonelectronically filed appointment of resident insurance producer; inserted (1)(e)(vi) and (1)(e)(vii) establishing fees for electronically and nonelectronically filed termination of resident insurance producer; inserted (1)(f)(iii) establishing $15 fee for nonelectronically filed appointment of nonresident insurance producer; inserted (1)(f)(vi) and (1)(f)(vii) establishing fees for electronically and nonelectronically filed termination of nonresident insurance producer; and made minor changes in style. Amendment effective July 1, 1994.

1993 Amendments — Composite Section: Chapter 451 in (1)(m)(ii), after "application", inserted "certificate, enrollment form"; and made minor changes in style.

Chapter 596 inserted (3) establishing an annual accreditation fee; at beginning of (4)(a) inserted exception clause; inserted (4)(b) providing for deposit and expenditure of the accreditation fee; and made minor changes in style.

Chapter 622 inserted (2) requiring Commissioner of Insurance to adopt fees implementing 33-17-1204 and 33-17-1205; in (4)(a), at end, inserted exception clause requiring fees implementing 33-17-1204 and 33-17-1205 to be deposited as required by 33-17-1207; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 596 and Ch. 622 made style changes that were slightly different. In each case, the codifier chose the more appropriate of the two.

1991 Amendment: In (1)(f)(iv) increased fee from $10 to $15; and in (1)(g) inserted "if administered by the commissioner".

1989 Amendments: Chapter 351 near end of (2), after "charges", deleted "received pursuant to Title 33, chapter 11, part 1"; and deleted former (4) that read: "(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123." Amendment effective July 1, 1989.

Chapter 509 inserted (1)(n) setting fees for initial and periodic review of applications for approval of prelicensing education courses; and made minor changes in phraseology. Amendment effective January 1, 1990.

Chapter 713 throughout section substituted "insurance producer" for "agent"; at beginning of (1) inserted exception clause; in (1)(a)(i)(A), (1)(a)(i)(B), and (1)(a)(ii) changed fees from $300 to $600; in (1)(e), before "insurance producer", deleted "resident"; in (1)(e)(iii) and (1)(e)(iv) changed fee from $10 to $15; deleted former (1)(e)(iv) that read: "(iv) annual renewal, each insurer.....10.00"; deleted former (1)(g) that read: "(g) solicitor's license:

(i) application for original license, including issuance of license, if issued.....15.00
(ii) annual renewal of license.....15.00
(iii) appointment of solicitor.....10.00";

in (1)(g), after "insurance producer", deleted "or solicitor"; and made minor changes in form and phraseology. Amendment effective January 1, 1990.

Applicability: Section 11, Ch. 509, L. 1989, provided: "[This act] applies to persons applying for a license as an insurance agent, solicitor (now insurance producer), or enrollment representative on or after January 1, 1990."

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

1987 Amendments: Chapter 249 in (2) inserted "and any fees and examination and miscellaneous charges received pursuant to Title 33, chapter 11, part 1, that are".

Chapter 469 increased fees as follows: in (1)(a)(i)(A) substituted "$300.00" for "$30.00"; inserted (1)(a)(iv) referring to amendment of certificate of authority; in (1)(b)(ii) substituted "25.00" for "10.00"; in (1)(c) substituted "10.00" for "5.00"; in (1)(e)(i) substituted "15.00" for

"10.00"; in (1)(e)(ii) substituted "15.00" for "10.00"; in (1)(g)(i) substituted "15.00" for "5.00"; in (1)(g)(ii) substituted "15.00" for "5.00"; inserted (1)(g)(iii) referring to appointment of solicitor (now insurance producer); in (1)(h) substituted "15.00" for "10.00"; in (1)(i)(i) substituted "50.00" for "25.00"; in (1)(i)(ii) substituted "50.00" for "25.00"; in (1)(j)(i) substituted "15.00" for "10.00"; in (1)(j)(ii) substituted "15.00" for "10.00"; in (1)(l) substituted "10.00" for "3.00"; and in (1)(n)(iii) substituted "100.00" for "50.00".

Chapter 537 in (1)(i) substituted "lines agent" for "line agent's".

1985 Amendment: In (2) near middle, after "state all", substituted remainder of sentence referring to fines and penalties and amounts collected under certain sections for "fees and licenses received by him under this section"; and inserted (4) referring to amounts to be deposited in the insurance regulatory trust account.

1981 Amendment: Increased the fee in (1)(e)(iii), (1)(e)(iv), (1)(f)(iii), and (1)(f)(iv) from $5 to $10; inserted (1)(e)(vi) referring to amendment of resident agent's license; inserted (1)(f)(v) referring to amendment of nonresident agent's license; and inserted (3) referring to refunds.

Not Codified: Subsection (3) of section 40-2726, R.C.M. 1947, relating to transition of fees from pre-1959 Montana Insurance Code, was not codified in the MCA as being temporary. This clause has not been repealed and is still valid law. Citation may be made to sec. 45, Ch. 286, L. 1959.

Administrative Rules

ARM 6.6.4102 Continuing education fees.

33-2-709. Retaliatory fees, taxes, and other obligations.

Compiler's Comments

1991 Amendment: In (2), after "state", inserted "or by an agency of this state other than the department".

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1981 Amendment: Inserted "any fees in conjunction with the licensing of insurance agents" after "This section shall not apply as to" near the beginning of (2).

Case Notes

Form of Burdens in Foreign State: The purpose of a "retaliatory statute" (since repealed) was to place on such corporations the same total burden for doing business in Montana that the states where such corporations have their domicile would impose upon a Montana corporation doing a like business there, and to arrive at a fair and equitable adjustment and to give the statute such an effect, the total exactions must be taken into account, irrespective of how they may be characterized or named. Occidental Life Ins. Co. v. Holmes, 107 M 48, 80 P2d 383 (1938).

Lesser Burden in Foreign State: Where the law of a foreign insurer's domicile imposed a lesser burden upon an outside life insurance corporation, by deducting the real estate tax from the ultimate amount due, a retaliation statute (since repealed) had no application. Occidental Life Ins. Co. v. Holmes, 107 M 48, 80 P2d 383 (1938).

33-2-712. Genetics program fee.

Compiler's Comments

2007 Amendment: Chapter 377 in first sentence near end after "pay" substituted "a fee of $1" for "the fee provided for in subsection (2)"; and deleted subsection (2) that read: "(2)(a) From October 1, 2005, through June 30, 2007, the fee is $1.

(b) Beginning July 1, 2007, the fee is 70 cents." Amendment effective May 3, 2007.

2005 Amendment: Chapter 396 in (1) in first sentence near end substituted "the fee provided for in subsection (2)" for "70 cents", in second sentence near middle after "be deposited in" substituted "an account in the state special revenue fund provided for in 50-19-212" for "the general fund", and in third sentence at beginning substituted "The fee may be used only" for "The purpose of the fee is" and after "to fund the" deleted "voluntary"; inserted (2) providing amount of fee; and made minor changes in style. Amendment effective October 1, 2005.

Amendment of Repeal: Section 1, Ch. 282, L. 1993, amended sec. 3, Ch. 638, L. 1991, by deleting a portion of the repealer provision imposed by that section. Amendment effective April 7, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 282, L. 1993, provided: "This bill provides for an extension of the 70-cent fee paid on each Montana resident insured on February 1 of each year under any individual or group disability or health insurance policy. The fee is paid by the insurer or health service corporation issuing the policy and the state group health plan in order to operate the voluntary statewide genetics program."

1991 Amendment: Increased genetics program fee from 45 cents to 70 cents. Amendment effective July 1, 1991.

1989 Amendment: Increased fee to 45 cents from 35 cents. Amendment effective July 1, 1989, and terminates June 30, 1991.

Termination: Section 7, Ch. 554, L. 1987, provided: "This act terminates on June 30, 1989."

33-2-713. Group disability policy exemption.

Compiler's Comments

Amendment of Repeal: Section 1, Ch. 282, L. 1993, amended sec. 3, Ch. 638, L. 1991, by deleting a portion of the repealer provision imposed by that section. Amendment effective April 7, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 282, L. 1993, provided: "This bill provides for an extension of the 70-cent fee paid on each Montana resident insured on February 1 of each year under any individual or group disability or health insurance policy. The fee is paid by the insurer or health service corporation issuing the policy and the state group health plan in order to operate the voluntary statewide genetics program."

Termination: Section 7, Ch. 554, L. 1987, provided: "This act terminates on June 30, 1989."

33-2-714. Health service corporation fee.

Compiler's Comments

Effective Date: Section 46(1), Ch. 415, L. 2019, provided that this section is effective July 1, 2019.

Applicability: Section 47, Ch. 415, L. 2019, provided: "An individual enrolled in the expanded medicaid program provided for in Title 53, chapter 6, part 13, on the date the centers for medicare and medicaid services approves a waiver authorizing community engagement requirements shall comply with the community engagement requirements of [this act] within 180 days of the date the department of public health and human services has implemented the community engagement requirements."

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Part 11
Affiliation and Merger — Holding Company Systems — Own Risk and Solvency Assessment

Part Compiler's Comments

Severability: Section 15, Ch. 64, L. 1971, was a severability clause.

Source: This part is derived from the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners and adopted by all states.

33-2-1101. Definitions.

Compiler's Comments

2021 Amendment: Chapter 344 inserted definitions of groupwide supervisor, group capital calculation instructions, internationally active insurance group, NAIC, NAIC liquidity stress test framework, and scope criteria and made minor changes in style. Amendment effective October 1, 2021.

2015 Amendment: Chapter 370 in definition of control substituted "This power may be evidenced through" for "whether through"; inserted definition of enterprise risk; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

Source: Section 1 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1102. Authorization of subsidiaries.

Commission Notes

This bill neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance-related activities. It is believed that this is a policy decision which should be made by each individual state. Legislation pending [1977] in California and Connecticut, for example, contains no limitation upon the kind of business in which a subsidiary may engage; on the other hand, legislation in New York, Nebraska and elsewhere specifies that subsidiaries of insurers may conduct only certain enumerated insurance-related operations.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

Source: Section 2(a) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1103. Additional investment authority — exemption from other investment restrictions — determination of qualification — divestiture.

Compiler's Comments

1989 Amendment: In (1)(a), near beginning of first sentence after "lesser of", changed 5% to 10%; in (1)(d), near beginning, substituted "a greater amount" for "any amount"; deleted (1)(e) relating to investment in real or personal development property (see 1987 MCA for text); and made minor changes in phraseology.

Severability: Section 10, Ch. 620, L. 1989, was a severability clause.

1981 Amendment: In (1), substituted "this part" for "all other sections of parts 10 and 11 of this chapter"; in (2) and (4), substituted "this part" for "parts 10 and 11 of this chapter".

Source: Section 2(b) through (e) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1104. Acquisition or divestiture of control of or merger with domestic insurer — filing requisites.

Compiler's Comments

2017 Amendment: Chapter 9 in (2)(a) near middle substituted "shall file a statement as provided in subsection (3) with the commissioner for approval" for "shall file for approval a confidential notice"; and deleted former (2)(c) that read: "(c) Subsections (2)(a) and (2)(b) do not apply to persons filing a statement under subsection (1)." Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendment: Chapter 370 in (1)(b) in middle inserted "as provided in subsection (3)" and deleted former last sentence that read: "For purposes of this section, a domestic insurer includes any other person controlling a domestic insurer unless the other person is either directly or through its affiliates primarily engaged in business other than the business of insurance"; inserted (2) relating to a person seeking to divest controlling interest in the domestic insurer; in (3) in introductory clause at end deleted "information"; inserted (3)(l) relating to agreements to provide the annual enterprise risk report; inserted (3)(m) relating to acknowledgments by persons in control of an insurance holding company system to provide information to the commissioner; inserted (7) defining domestic insurer and person; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 3(a) through (c) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1105. Approval by commissioner — hearings — notice.

Compiler's Comments

2017 Amendment: Chapter 9 inserted (1)(g) relating to hazardous or prejudicial acquisitions; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendment: Chapter 370 in (1), (1)(a), and (1)(d) substituted "33-2-1104" for "33-2-1104(1)"; in (1) after "acquisition" inserted "or divestiture"; in (1)(f) substituted "the change in control" for "it" and at end deleted "to permit the merger or other acquisition of control"; in (4) substituted "at the expense of the acquiring or divesting party" for "at the acquiring party's expense"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Inserted (4) allowing Commissioner to retain legal, actuarial, accounting, and other services necessary to assist reviewing proposed acquisition of control; and made minor changes in phraseology.

Severability: Section 10, Ch. 620, L. 1989, was a severability clause.

Source: Section 3(d) and (e) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1106. Exemptions — violations — jurisdiction.

Compiler's Comments

2019 Amendment: Chapter 62 in (1) substituted "and 33-2-1105" for "33-2-1105, and this section"; in (2) near beginning and in (3) at end of first sentence substituted "or 33-2-1105" for "33-2-1105, and this section"; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 370 in (2)(a) substituted "33-2-1104(1) through (5)" for "33-2-1104(1) through (4)"; in (2)(b) after "control of" inserted "divestiture of"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Deleted (1)(a) that provided section does not apply to offer, request, invitation, agreement, or acquisition by person referred to in 33-2-1104(1) of any voting security referred to in that subsection that was not issued and outstanding immediately prior to consummation of offer; in (3), before "certified mail", deleted "registered or"; and made minor changes in phraseology and form.

Severability: Section 10, Ch. 620, L. 1989, was a severability clause.

Source: Section 3(f) through (h) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1111. Registration of insurers — requisites — termination.

Compiler's Comments

2021 Amendment: Chapter 344 in (4) inserted last sentence regarding materiality; inserted (7)(b) regarding group capital calculation reporting; inserted (7)(c) regarding NAIC liquidity stress test reporting; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 9 in (2)(b) substituted "the identity and relationship of every member" for "the identity of every member"; in (2)(c) substituted "transactions currently outstanding or that occurred during the last calendar year" for "existing relationships, transactions currently outstanding"; in (2)(c)(vi) after "reinsurance agreements" deleted "covering all or substantially all of one or more lines of insurance of the ceding company"; inserted (2)(e) relating to financial statements within affiliates; inserted (2)(f) relating to statements by an insurer's board of directors regarding corporate governance and internal control; inserted (2)(h) concerning other information required by rule; in (7) substituted third sentence relating to reports filed with the lead state commissioner for former text that read: "The report must be filed with the insurance regulator in the state in which the insurance holding company system is domiciled, as determined by the procedures within the financial analysis handbook adopted by the NAIC"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendment: Chapter 370 inserted (7) relating to ultimate controlling person filing an annual enterprise risk report; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1995 Amendment: Chapter 379 in (2)(c)(v), after "arrangements", deleted "other than cost allocation arrangements based upon generally accepted accounting principles"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 596 in second sentence of (1), before "15 days", deleted "60 days after July 1, 1971, or" and before "unless" deleted "whichever is later"; deleted second sentence of (6) that read: "Except as provided in 33-2-1114, each registered insurer shall report all dividends and other distributions to shareholders within 2 business days following the declaration thereof"; and made minor changes in style.

1989 Amendment: In (2), in introductory clause, inserted "with the commissioner, on or before April 30 each year"; inserted (2)(c)(vii) relating to dividends and other distributions to shareholders; inserted (2)(c)(viii) relating to consolidated tax allocation agreements; inserted (2)(d) relating to pledge of insurer's stock for loan to insurance holding company system member; inserted (3) requiring registration statement to contain summary of items representing change from prior statement; inserted (5) requiring person in holding company to provide information necessary for insurer to comply with part; and made minor changes in phraseology.

Severability: Section 10, Ch. 620, L. 1989, was a severability clause.

Source: Section 4(a) through (g) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1112. Exemptions — disclaimer — violations.

Compiler's Comments

2017 Amendment: Chapter 275 in (3) near middle substituted "enterprise risk report" for "enterprise risk request [report]". Amendment effective October 1, 2017.

2015 Amendment — Code Commissioner Correction: Chapter 370 in (2)(a) deleted former last two sentences that read: "After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under 33-2-1111 and this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance"; inserted (2)(b) relating to the commissioner's approval of a disclaimer; in (3) substituted "file a registration statement, any summary of the registration statement, an enterprise risk report, or any amendment to the registration statement or enterprise risk request" for "file a registration statement or any amendment thereto"; and made minor changes in style. Amendment effective April 30, 2015.

In (3) the code commissioner inserted the bracketed reference to "report" because the term "enterprise risk request" apparently should be "enterprise risk report".

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

Source: Section 4(h) through (j) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1113. Transactions with affiliates — standards.

Compiler's Comments

2019 Amendment: Chapter 62 in (6)(j) substituted "and 33-2-1105" for "through 33-2-1106". Amendment effective October 1, 2019.

2017 Amendment: Chapter 9 in (2)(a) near beginning after "holding company system" inserted "including amendments or modifications to affiliate agreements previously filed under this section", near middle after "enter into a transaction" deleted "and the commissioner has not disapproved the transaction", and at end inserted "and the commissioner does not disapprove the transaction"; in (2)(a)(iii) substituted "reinsurance agreements or modifications to reinsurance agreements, including" for "any of the following arrangements in which the projected reinsurance premium or a change in any of the next 3 years in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31"; in (2)(a)(iii)(B) substituted current text for "reinsurance agreements"; deleted former (2)(a)(iii)(C) that read: "(C) reinsurance modification to reinsurance agreements"; inserted (2)(a)(v) relating to direct or indirect acquisitions or investments in persons who control the insurer or an affiliate; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendment: Chapter 370 in (2)(a)(iii) substituted current text relating to agreements for former text that read: "reinsurance agreements or modifications to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer"; in (2)(a)(iv) following "service contracts" inserted "tax allocation agreements, guarantees"; in (6)(j) in first sentence substituted "investments in affiliates" for "investments in subsidiaries"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1993 Amendment: Chapter 451 in (1)(d), near beginning before "clearly", deleted "be so maintained as to"; and made minor changes in style.

1989 Amendment: Rewrote entire section (see 1987 MCA for former text) relating to regulation of insurers with affiliates (see 1989 Session Law for text).

1989 Statement of Intent: The statement of intent attached to Ch. 620, L. 1989, provided: "A statement of intent is required for this bill because [section 6(2)(a)(ii)(E)] [33-2-1113(2)(a)(ii)(E)] authorizes the commissioner of insurance of the state of Montana to specify by rule a material transaction that adversely affects the interests of an insurer's policyholders and [section 8(9)] [33-2-1205(9), now repealed] allows the commissioner to adopt rules implementing [sections 1 through 8] [sic, Title 33, Ch. 2, part 12]. The legislature intends that the rules the commissioner adopts to implement this bill be designed principally to protect Montana insurance consumers."

Severability: Section 10, Ch. 620, L. 1989, was a severability clause.

Source: Section 5(a) and (b) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1114. Dividends and other distributions — commissioner approval.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (4) prohibiting payment of dividends unless the Commissioner has been notified; and made minor changes in style.

1987 Amendment: At beginning of (1) substituted "An insurer subject to registration under 33-2-1111 and 33-2-1112 may not" for "No insurer subject to registration under 33-2-1111 and 33-2-1112 shall"; and in (2), after "12 months exceeds", deleted "the greater of" and after "December 31 next preceding" deleted "or the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the 12-month period ending December 31 next preceding".

33-2-1115. Examination.

Compiler's Comments

2017 Amendment: Chapter 9 inserted (4) relating to failure to comply with orders and examination of affiliates; and inserted (5) relating to examination and enforcement procedures by the commissioner. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendment: Chapter 370 in (1)(a) near beginning substituted "powers under Title 33, chapter 1, part 4" for "powers which the commissioner has under chapter 1, part 4" and near end substituted "that the commissioner determines are necessary" for "as are necessary"; inserted (1)(b) relating to information requested by the commissioner to the ultimate controlling party or other entities; in (2) in second sentence substituted "are retained to act" for "shall act"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1993 Amendment: Chapter 596 in (1), at beginning, deleted "Subject to the limitation contained in this section and"; deleted former (2) that read: "The commissioner shall exercise his power under subsection (1) only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected"; and made minor changes in style.

Source: Section 6 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1116. Confidentiality of information.

Compiler's Comments

2021 Amendment: Chapter 344 in (1)(a) in first sentence after "made pursuant to 33-2-1115" substituted "and all other information provided to the department of insurance" for "and all information reported" and after "as provided in 2-6-1002" inserted "and Title 2, chapter 6, part 10, are recognized by this state as being proprietary and contain trade secrets, and are confidential by law"; inserted (1)(b) concerning confidentiality of group capital calculations; inserted (1)(c) concerning confidentiality of liquidity stress test results; in (3)(a) in first sentence after "information subject to subsection (1)," inserted "including proprietary and trade secret documents and materials" and after "with the NAIC" substituted "with any third-party consultants designated by the commissioner" for "and its affiliates and subsidiaries"; in (3)(c) after "privileged documents, materials, or other information" inserted "including proprietary and trade-secret information"; in (4)(a) after "the NAIC" inserted "and any third-party consultant designated by the commissioner"; in (4)(b)(i) after "the NAIC" substituted "or a third-party consultant designated by the commissioner" for "and its affiliates and subsidiaries" and inserted last sentence regarding agreement to confidentiality and privileged status; in (4)(b)(ii) after "the NAIC" substituted "or a third-party consultant" for "and its affiliates and subsidiaries" and after "the NAIC's" inserted "or a third-party consultant's, as designated by the commissioner"; inserted (4)(b)(iii) regarding storing information in a permanent database; in (4)(b)(iv) in two places after "the NAIC" inserted "or a third-party consultant designated by the commissioner" in

(4)(b)(v) in two places substituted "or a third-party consultant designated by the commissioner" for "and its affiliates and subsidiaries"; inserted (4)(b)(vi) regarding notification of the identity of the consultant; in (7) after "the NAIC" inserted "or a third-party consultant designated by the commissioner"; inserted (8) regarding nondissemination of group capital calculations, group capital ratios, liquidity stress tests, or supporting disclosures, or their components; and made minor changes in style. Amendment effective October 1, 2021.

2015 Amendment — Coordination: Chapter 370 substituted current text related to confidentiality for former text that read: "All confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1111 and 33-2-1112 containing confidential criminal justice information, trade secrets, or personal information must be given confidential treatment, may not be subject to subpoena, and may not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication of the trade secrets or personal information, in which event the commissioner may publish all or any part of the trade secrets or personal information in a manner that the commissioner considers appropriate." Amendment effective April 30, 2015.

Sections 70 and 71, Ch. 348, L. 2015, coordination sections, in (1) after "33-2-1113" substituted "are confidential information as provided in 2-6-1002 and privileged, are not subject to subpoena or discovery" for "must be confidential by law and privileged, are not subject to 2-6-102, subpoena, or discovery"; and in (7) after "this section" substituted "are confidential information as provided in 2-6-1002 and privileged, are not admissible in evidence in a private civil action, and are not subject to subpoena or discovery" for "are confidential by law and privileged, are not admissible in evidence in a private civil action, and are not subject to 2-6-102, subpoena, or discovery".

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1999 Amendment: Chapter 416 in first sentence after "All" substituted language regarding confidential criminal justice information, personal information, and trade secrets specifically identified and for which reasonable privilege grounds asserted for former language that read: "information, documents, and copies thereof" and after "33-2-1112" inserted "containing confidential criminal justice information, trade secrets, or personal information"; and made minor changes in style. Amendment effective October 1, 1999.

Source: Section 7 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1117. Rules.

Compiler's Comments

Source: Section 8 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1118. Injunctions.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 9(a) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

Case Notes

Control Over General Venue Provisions: The Commissioner of Securities and Insurance filed a complaint in the District Court for Lewis and Clark County against an insurer with its principal office in Custer County, seeking statutory fines pursuant to 25-2-124 and injunctive relief pursuant to 33-1-1118. The insurer filed a motion to change the venue and the District Court granted the motion. The Commissioner appealed. The Supreme Court affirmed, finding that the venue provision in 33-2-1118 controlled over the more general venue provisions contained in Title 25, ch. 2, part 1. The court noted that allowing the venue provision in 25-2-124 to control would render the venue provisions in 33-2-1118 superfluous and applied the instruction in 25-2-131 that "specific statutes not within" Title 25, ch. 2, part 1, are not repealed by implication or otherwise by that part. Rosendale v. Victory Ins. Co., 2018 MT 299, 393 Mont. 428, 432 P.3d 114.

33-2-1119. Voting of securities — prohibition — injunction — sequestration.

Compiler's Comments

Source: Section 9(b) and (c) of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1120. Registration, transaction, and reporting requirements — administrative or civil penalties.

Compiler's Comments

2017 Amendment: Chapter 396 deleted former (4) that read: "(4) Whenever the commissioner determines that an insurer or a director, officer, employee, or insurance producer of the insurer may have committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if the insurer does not have an office in the state, then by the district court for Lewis and Clark County against the insurer or the responsible director, officer, employee, or insurance producer of the insurer"; deleted former (7) that read: "(7) Any individual who willfully violates this part may be fined not more than $5,000 or, if the willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned for not more than 2 years, or both"; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2015 Amendment: Chapter 370 in (4) at beginning substituted "Whenever the commissioner determines" for "Whenever it appears to the commissioner" and substituted "may have committed" for "has committed"; inserted (5) relating to withholding of information; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendments: Chapter 620 inserted (1), (2), and (3) providing for civil remedy and procedure; in (5) increased fine from $5,000 to $25,000; and in (6) increased fine from $500 to $5,000.

Chapter 713 substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Severability: Section 10, Ch. 620, L. 1989, was a severability clause.

Source: Section 10 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1121. Receivership.

Compiler's Comments

Source: Section 11 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1122. Revocation, suspension, or nonrenewal of insurer's license.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 12 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1123. Judicial review — mandamus.

Compiler's Comments

Source: Section 13 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1124. Conflict with other laws.

Compiler's Comments

Source: Section 14 of the Insurance Holding Company System Regulatory Act, promulgated by the National Association of Insurance Commissioners. See part compiler's comment.

33-2-1130. Short title.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1131. Purpose.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1132. Definitions.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1133. Risk management framework required.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1134. Own risk and solvency assessment required.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1135. ORSA summary report.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1136. ORSA exemptions — conditions — waiver — override.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1137. Confidentiality.

Compiler's Comments

2015 Amendment — Coordination: Sections 67 and 68, Ch. 348, L. 2015, coordination sections, in (1) substituted "The information is confidential information as provided in 2-6-1002 and privileged, is not admissible in evidence in any civil action, and is not subject to subpoena, discovery, or the provisions of the Freedom of Information Act" for "The information is confidential by law and privileged, not admissible as evidence in any civil action, and not subject to subpoena, discovery, the provisions of 2-6-102, or the Freedom of Information Act"; and in (8) substituted "is confidential information as provided in 2-6-1002 and privileged, is not admissible in evidence in any private civil action, and is not subject to subpoena or discovery" for "is confidential by law and privileged, is not admissible in evidence in any private civil action, and is not subject to 2-6-102, subpoena, or discovery". Amendments effective October 1, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1138. Penalty.

Compiler's Comments

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Effective Date: Section 43, Ch. 370, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-2-1140. Groupwide supervision of internationally active insurance groups.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Part 12
Limit of Risk — Reinsurance

33-2-1201. Limit of risk.

Compiler's Comments

1995 Amendment: Chapter 379 in (6), after "coverages", deleted "sprinklered risks".

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 596 near beginning of (3) substituted "this part must" for "33-2-1205 shall"; and made minor changes in style.

33-2-1206. Bulk reinsurance — foreign or alien insurers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: In (1) at end of first sentence, deleted "after a hearing thereon" after "writing" and inserted remainder of (1) authorizing discretionary hearings; inserted (1)(a) through (1)(c) listing factors to be considered on bulk reinsurance agreements; and in (2) inserted "or disapprove" after "approve" and after "after" substituted "filing the proposed agreement or, when applicable, after a hearing" for "such a hearing unless he finds that it would substantially reduce the protection or service to the policyholders".

33-2-1211. Bulk reinsurance — stock insurers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-1212. Bulk reinsurance — mutual insurers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-2-1216. Credit allowed domestic ceding insurer — rulemaking.

Compiler's Comments

2021 Amendment: Chapter 65 in (1) at end of first sentence inserted references to subsections (7) and (8); in (5)(b)(iii) in last sentence at beginning substituted "Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide" for "The group shall make available"; in (5)(b)(iv)(B)(III) at beginning inserted "within 90 days after its financial statements are due to be filed with the group's domiciliary regulator" and near middle substituted "shall provide" for "shall make available"; inserted (7) providing conditions for which credit must be allowed when reinsurance is ceded to an assuming insurer; in (8) in middle inserted references to subsections (6), (7), and (8); in (9)(a) in middle inserted references to subsections (6) and (7); in (10)(a) in middle inserted references to subsections (6) and (7); and made minor changes in style. Amendment effective March 23, 2021.

2019 Amendment: Chapter 60 in (5)(e)(ii)(D) substituted "a registered agent" for "the commissioner as its agent" and inserted "as required by 33-1-605". Amendment effective July 1, 2019.

2017 Amendment: Chapter 9 in (5)(e)(i) substituted "this subsection (5)(e)" for "subsection (5)(e)(ii) or (5)(e)(iii)"; in (5)(e)(ii) near beginning substituted "(5)(e)" for "(5)(e)(ii)"; in (5)(e)(iii) in last sentence near end substituted "(5)(e)" for "(5)(e)(ii)"; inserted (5)(e)(v) relating to jurisdictions approved by the commissioner that do not appear on the list of qualified jurisdictions; in (5)(e)(ix) in first sentence substituted "reinsurer" for "insurer"; in (5)(e)(x) at end substituted "the certified reinsurer" for "the domestic ceding insurer"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendment: Chapter 370 in (1) in first sentence after "asset or a" substituted "reduction" for "deduction" and inserted second sentence relating to credit in respect to cessions of classes of business the insurer is licensed to write or assume; in (3) in first sentence following "accredited" inserted "by the commissioner"; deleted former (3)(d)(i) and (3)(d)(ii) that read: "(i) maintains a surplus with regard to policyholders in an amount that is not less than $20 million and whose accreditation has not been denied by the commissioner within 90 days of its submission; or

(ii) maintains a surplus with regard to policyholders in an amount less than $20 million and whose accreditation has been approved by the commissioner"; inserted (3)(e) relating to an insurer demonstrating adequate financial capacity; in (5)(a) inserted last sentence relating to examination of books by the commissioner; in (5)(b)(i) at end inserted exception clause; inserted (5)(b)(ii) relating to reduction in trusteed surplus after discontinuance of underwriting; in (5)(b)(iii) substituted "representing the respective underwriters' liabilities attributable to business written in the United States to any underwriter of the group" for "representing the group's liabilities attributable to business written in the United States"; inserted (5)(e) relating to the commissioner allowing credit when reinsurance is ceded; in (7)(a) after "accredited" inserted "or certified"; in (7)(a)(ii) at beginning substituted "the assuming insurer shall designate" for "to designate" and at end substituted "insurer" for "company"; inserted (8) relating to assuming insurers meeting certain requirements; inserted (9) relating to the commissioner's suspension or revocation of a reinsurer's accreditation or certification; inserted (10) relating to steps a ceding insurer must take; inserted (11) relating to insurance contracts issued or renewed after the effective date of a suspension or revocation; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1995 Amendment: Chapter 379 in (5)(b)(ii), near beginning, inserted "including incorporated and"; inserted first sentence in (5)(b)(iii) concerning business other than underwriting and solvency regulation of incorporated group members and in second sentence, after "underwriter", substituted "by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled" for "by the group's domiciliary regulator and its independent public accountants"; in (5)(b)(iv)(B)(III), after "by the", substituted "insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled" for "member's domiciliary regulator and its independent public accountant"; adjusted subsection references; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer — definition.

Compiler's Comments

2021 Amendment: Chapter 65 inserted (5)(b) concerning reinsurance arrangements provided under the section; and made minor changes in style. Amendment effective March 23, 2021.

2015 Amendment: Chapter 370 in (2)(b) near middle inserted "including those exempt from filing as defined in the purposes and procedures manual of the securities valuation office"; in (2)(c) near middle substituted "ceding insurer" for "ceding company"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1999 Amendment: Chapter 304 at end of (5) substituted "chapter 12" for "33-2-806". Amendment effective July 1, 1999.

1995 Amendment: Chapter 379 inserted (3) defining qualified United States financial institution for the purposes of subsection (2)(c); inserted (4) defining qualified United States financial institution for purposes of this part other than subsection (2)(c); and inserted (5) concerning the Commissioner adopting rules to implement the provisions of 33-2-307, 33-2-708, and 33-2-806.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-2-1218. Reinsurance agreements affected.

Compiler's Comments

1995 Amendment: Chapter 379 near end substituted "after April 1" for "before April 1".

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Part 13
Supervision, Rehabilitation, and Liquidation

Part Compiler's Comments

Continuation of Delinquency Proceedings: Section 8, Ch. 383, L. 1979, provided: "Every proceeding heretofore commenced under the laws in effect before the enactment of [this act] shall be considered to have commenced under [this act] for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had [this act] not been enacted."

Severability: Section 60, Ch. 383, L. 1979, was a severability section.

Incorporation Into the Montana Insurance Code: Sections 33-2-1301 through 33-2-1311 (33-2-1311 now repealed), 33-2-1321 through 33-2-1323, 33-2-1331 through 33-2-1336, and 33-2-1341 through 33-2-1388 were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of the Montana Insurance Code, Title 33, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in Title 33.

Source: This part is derived from the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977. This part replaces the Uniform Rehabilitation Reorganization or Liquidation Act of 1936 that was adopted by Montana at Title 33, ch. 2, part 9, MCA (Title 40, ch. 51, R.C.M. 1947), and repealed in 1979. There were no Montana cases decided under that repealed Uniform Act.

Part Case Notes

Assurance Company Liquidation — Petition for Return of Funds on Deposit Denied for Lack of Jurisdiction: As part of a financing agreement, borrowers were required to obtain a financial guarantee bond for the amount of the loan. Borrowers made deposits with Glacier General Assurance Company (Glacier), which represented 3 months' principal and interest payments and other assessments on the loan commitment. The agreement between lender and borrowers provided the deposit would be returned to borrowers upon satisfaction of the debt or surrendered to Glacier in the event of default. Glacier was later ordered into rehabilitation pursuant to 33-2-1332. Borrowers refinanced and paid the notes with lender, and lender subsequently surrendered the bonds to Glacier. Borrowers petitioned the District Court to intervene in liquidation seeking return of deposits from Glacier. The specific provisions of the Insurers Supervision, Rehabilitation, and Liquidation Act indicate a clear legislative intent that the liquidator have exclusive jurisdiction to consider all claims for any money under his control before claimants have access to the courts. Therefore, the District Court properly dismissed the petitions for return of the deposits for lack of jurisdiction. Bennett v. Glacier Gen. Assur. Co., 229 M 538, 748 P2d 464, 44 St. Rep. 2200 (1987).

33-2-1301. Short title.

Compiler's Comments

Source: Section 1(A) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1302. Construction and purpose.

Compiler's Comments

Source: Section 1(B) through (D) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1303. Definitions.

Compiler's Comments

2013 Amendment: Chapter 169 in definition of insolvency deleted former (a)(iii) that read: "(iii) as to any insurer licensed to do business in this state as of July 1, 1979, which does not meet the standard established under subsection (11)(a)(ii), for a period not to exceed 3 years from July 1, 1979, the inability to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law"; and made minor changes in style. Amendment effective April 9, 2013.

Correction: In subsection (7)(b) the Code Commissioner changed the fourth word from "of" to "or" to correct a typographical error in sec. 2, Ch. 383, L. 1979, which enacted 33-2-1303. The Model Act reads "or".

Source: Section 3 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1304. To whom proceedings may be applied.

Compiler's Comments

2017 Amendment: Chapter 151 in (5) inserted "health service corporations, and health maintenance organizations" and at end substituted "and" for "or"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

Source: Section 2 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1305. Who may bring action — procedure exclusive.

Compiler's Comments

Source: Section 4(A) and (B) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1306. Personal jurisdiction.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 4(C) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1307. Stay pending out-of-state proceedings.

Compiler's Comments

Source: Section 4(D) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1308. Venue.

Compiler's Comments

Source: Section 4(E) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

Case Notes

Principal Place of Business Proper Venue: The plaintiff brought suit against the defendant bank to enforce a letter of credit established on its behalf by an insurance company that subsequently went into liquidation. The bank moved for a change of venue, relying on state insurance laws. The Supreme Court held that a letter of credit, as opposed to an instrument of guaranty, created a primary obligation on the part of the bank that is independent from any obligations of the party that established the letter of credit. In light of the nature of a letter of credit, the bankrupt company and its status had nothing to do with the dispute between the parties; proper venue was the county where the defendant had its principal place of business. Gerling Global Reinsurance Corp. v. First Interstate Bank, 242 M 216, 789 P2d 1237, 47 St. Rep. 726 (1990). See also Bennett v. Liberty Nat'l Fire Ins. Co., 968 F2d 969 (1992).

33-2-1309. Injunctions and orders.

Compiler's Comments

Source: Section 5 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1310. Cooperation of officers, owners, and employees.

Compiler's Comments

2017 Amendment: Chapter 396 deleted former (5)(a) that read: "(a) be sentenced to pay a fine not exceeding $10,000 or to undergo imprisonment for a term of not more than 1 year, or both"; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 6 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1321. Commissioner's summary orders and supervision proceedings.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 9 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1322. Court's seizure order.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 10 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1323. Confidentiality of proceedings.

Compiler's Comments

2011 Amendment: Chapter 19 in first sentence near middle substituted "with the proceedings" for "with the records, documents, files, or papers". Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 11 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1331. Grounds for rehabilitation.

Compiler's Comments

1993 Amendment: Chapter 596 near beginning of (6) substituted "33-1-408" for "33-1-403"; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 12 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1332. Rehabilitation orders.

Compiler's Comments

Source: Section 13 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

Case Notes

Preferential Claim to Trust Property Applicable Only if Property Continues to Exist: When trust funds are commingled with private funds, the entire mixed funds are impressed with the trust to the extent of the trust funds, except to the extent that the trustee is able to distinguish and separate the trustee's own funds from the trust funds. The trust property need not remain in its original form if the trust property is held by the trustee and the beneficiary can trace the trust property to its substituted form, and if the beneficiary can trace the trust property, the beneficiary is entitled to impress a trust upon the substitute property. However, a preferential claim to trust property in a general operating account exists only if the trust property continues to exist. In this case, the beneficiary was unable to prove that the trust property was commingled with or used to purchase any other assets; therefore, no preferential right to the trustee's remaining assets was established and the District Court did not err in concluding that a Class 4 priority claim existed. Bennett v. Glacier Gen. Assurance Co., 259 M 430, 857 P2d 683, 50 St. Rep. 866 (1993).

33-2-1333. Powers and duties of the rehabilitator.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 14 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1334. Effect of proceedings on pending and potential litigation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 15(A) and (B) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1335. Standing of guaranty associations in proceedings.

Compiler's Comments

Source: Section 15(C) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1336. Termination of rehabilitation.

Compiler's Comments

Source: Section 16 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1341. Grounds for liquidation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 17 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1342. Liquidation orders.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (6) regarding implementation of an appeal pendency plan; and made minor changes in style.

Source: Section 18 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1343. Continuance of policy coverage.

Compiler's Comments

Source: Section 19 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1344. Dissolution of insurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 20 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1345. Powers of liquidator.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1981 Amendment: In (1)(f)(ii), substituted "including . . . purposes on" for "and has the power to sell, compound, compromise, or assign debts for purposes of collection upon".

Source: Section 21 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1346. Notice to creditors and others.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (3) regarding notice of availability of state guaranty association coverage; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 22 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1347. Duty of insurance producers to give notice.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Correction: In subsection (1), third sentence, the Code Commissioner deleted "the expiration of" to correct a typographical error in sec. 23, Ch. 383, L. 1979, which enacted 33-2-1347. The Model Act reads correctly.

Source: Section 23 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1348. Effect of proceedings on pending and potential litigation — actions by liquidator.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 24(A) through (C) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

Case Notes

Assurance Company Liquidation — Petition for Return of Funds on Deposit Denied for Lack of Jurisdiction: As part of a financing agreement, borrowers were required to obtain a financial guarantee bond for the amount of the loan. Borrowers made deposits with Glacier General Assurance Company (Glacier), which represented 3 months' principal and interest payments and other assessments on the loan commitment. The agreement between lender and borrowers provided the deposit would be returned to borrowers upon satisfaction of the debt or surrendered to Glacier in the event of default. Glacier was later ordered into rehabilitation pursuant to 33-2-1332. Borrowers refinanced and paid the notes with lender, and lender subsequently surrendered the bonds to Glacier. Borrowers petitioned the District Court to intervene in liquidation seeking return of deposits from Glacier. The specific provisions of the Insurers Supervision, Rehabilitation, and Liquidation Act indicate a clear legislative intent that the liquidator have exclusive jurisdiction to consider all claims for any money under his control before claimants have access to the courts. Therefore, the District Court properly dismissed the petitions for return of the deposits for lack of jurisdiction. Bennett v. Glacier Gen. Assur. Co., 229 M 538, 748 P2d 464, 44 St. Rep. 2200 (1987).

33-2-1349. Standing of guaranty associations in proceedings.

Compiler's Comments

Source: Section 24(D) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1350. Collection and listing of assets.

Compiler's Comments

Source: Section 25 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1351. Fraudulent transfers prior to petition.

Compiler's Comments

Source: Section 26 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1352. Fraudulent transfer after petition.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 27 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1353. Voidable preferences and liens.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

Source: Section 28(A) through (F) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1354. Procedure for voiding preferences and liens.

Compiler's Comments

Source: Section 28(G) and (H) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1355. Set off for further credit given in good faith.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 28(I) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1356. Transactions to pay for attorneys' services.

Compiler's Comments

Source: Section 28(J) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1357. Personal liability.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 28(J)(1) through (3) of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1358. Claims of holders of void or voidable rights.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Correction: In subsection (2), "or a preference" apparently should be "of a preference". However, the Model Act reads "or a preference".

Source: Section 29 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1359. Setoffs.

Compiler's Comments

1997 Amendment: Chapter 531 in (2), in introductory clause after "setoff", deleted "or counterclaim"; deleted (2)(d) that read: "(d) the obligation of the person is to pay premiums, whether earned or unearned, to the insurer"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

Source: Section 30 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1360. Assessments against members of insurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 31 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1361. Reinsurer's liability.

Compiler's Comments

Source: Section 32 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1362. Recovery of premiums owed.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 33 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1363. Domiciliary liquidator's proposal to distribute assets.

Compiler's Comments

2017 Amendment: Chapter 151 inserted (2)(f) regarding compliance with Title 33, chapter 3, part 6, for certain insurers; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2001 Amendment: Chapter 227 in (2)(a) at end substituted "class 1" for "classes 1 and 2"; and made minor changes in style. Amendment effective October 1, 2001.

Source: Section 34 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1364. Filing of claims.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 35 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1365. Proof of claim.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 36 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

Case Notes

Prior Consent Judgment Not Conclusive as to Damages Against Liquidated Insurer — Res Judicata Inapplicable Under Statutory Scheme: When Dr. Lubin performed surgery on claimant in 1980, he was insured against professional malpractice by Glacier General Assurance Company. In 1984, Kowalski filed a suit against Dr. Lubin for medical malpractice. In 1985, Glacier General was declared insolvent and ordered into liquidation under the auspices of Bennett, the Montana Insurance Commissioner. In 1986, Bennett received a claim from Kowalski against Glacier General in compliance with this section. In 1988, Kowalski concluded her litigation against Lubin by a settlement for $35,000. However, no release in favor of Lubin or Glacier General was executed. The insurer who insured Lubin prior to 1980 was to pay one-half of the settlement and Lubin the other half. The claim was referred to a referee of the District Court, who recommended that Bennett pay the entire claim of $35,000. Bennett objected to payment of more than one-half the claim, arguing that the issue was res judicata, based upon Kowalski's settlement with Lubin, but the District Court ordered Bennett to pay the entire $35,000. The Supreme Court held that while the doctrine of res judicata would normally apply, the doctrine did not apply under these circumstances because this section is inconsistent with the common law. Under this section, the prior judgment did not conclusively establish the amount of Kowalski's damages caused by Glacier General, and payment of the entire amount of Kowalski's claim was therefore not barred by the consent judgment. In re Claim of Kowalski, 260 M 269, 860 P2d 104, 50 St. Rep. 1038 (1993).

33-2-1366. Special claims.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 37 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1367. Claims of insureds or claimants against insureds.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 38 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1368. Disputed claims.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 39 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1369. Claims of sureties.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 40 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1370. Claims of secured creditors.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 41 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1371. Priority of distribution.

Compiler's Comments

2001 Amendment: Chapter 227 in (2) at beginning after "Class 2" deleted "debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. Such priority is in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(3) Class 3", at end of first sentence inserted "for payment of covered claims or covered obligations of the insurer", and in second sentence after "under life" inserted "and health" and after "death proceeds" inserted "health benefits"; inserted (3) regarding class 3 claims of the federal government; at beginning of (4) after "Class 4" substituted "debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the complaint for liquidation. Officers and directors may not be entitled to the benefit of this priority. The priority must be in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees" for "claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors"; at beginning of (5) after "Class 5" substituted "claims of general creditors" for "claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (8)"; at beginning of

(6) after "Class 6" substituted "claims of any state or local government. Claims, including those of any state or local government for a penalty or forfeiture, may be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, along with reasonable and actual costs. The remainder of the claims must be postponed to the class of claims under subsection (9)" for "claims filed late or any other claims other than claims under subsections (7) and (8)"; at beginning of (7) after "Class 7" substituted "claims filed late or any other claims other than claims under subsections (8) and (9)" for "surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law"; at beginning of (8) after "Class 8" substituted "surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law" for "the claims of shareholders or other owners"; inserted (9) regarding class 9 claims of shareholders or other owners; and made minor changes in style. Amendment effective October 1, 2001.

Source: Section 42 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

Case Notes

Failure to Acquire Obligations Under Sales Agreement Not Affecting Terms of Bond: Parks contracted with Michael to purchase 96 thoroughbred horses, paying $1,000 down, executing a promissory note for the remaining $1,749,000, and securing the note through a bond issued by Glacier General Assurance Company (Glacier). The bond required Michael to assign his security interest in the horses to Glacier in the event that performance on the bond was required. Parks failed to make the first installment payment, so Michael sent notice of default and acceleration to Parks. Michael also notified Glacier of the default, requested performance, and indicated the expectation that Glacier take possession of the horses or reimburse the costs of holding them. The District Court granted summary judgment to Michael's estate, holding that the claim was valid in the amount of the bond plus expenses for the subsequent maintenance, upkeep, and sale of the horses. On appeal, the argument was made that Glacier had no obligation to pay costs for the horses' care because under the terms of the sales agreement, possession did not transfer until the first installment was made. Glacier's liability for maintenance and sale expenses derived from its failure to perform its obligations under the bond. Had Glacier performed when requested, the expenses would not have been incurred. The fact that Parks had not yet acquired the obligation to care for the horses under the sales contract did not affect Glacier's liability for those expenses under the terms of the bond. In re Estate of Michael v. Glacier Gen. Assurance Co., 264 M 261, 871 P2d 272, 51 St. Rep. 252 (1994).

33-2-1372. Liquidator's recommendations to the court concerning claims.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 43 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1373. Distribution of assets.

Compiler's Comments

Source: Section 44 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1374. Unclaimed and withheld funds.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 45 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1375. Termination of liquidation proceedings.

Compiler's Comments

Source: Section 46 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1376. Reopening liquidation.

Compiler's Comments

Source: Section 47 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1377. Disposition of records during and after liquidation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 48 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1378. Audit of the receiver's books.

Compiler's Comments

Source: Section 49 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1379. Conservation of property of foreign or alien insurers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 50 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1380. Liquidation of assets of foreign or alien insurers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 51 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1381. Domiciliary liquidators in other states.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 52 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1382. Ancillary formal proceedings.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Inserted "county clerk and recorder" for "recorder of deeds in this state" in (2); deleted "with that recorder of deeds" at the end of (2).

Source: Section 53 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1383. Ancillary summary proceedings.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 54 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1384. Claims of nonresidents against insurers domiciled in this state.

Compiler's Comments

Source: Section 55 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1385. Claims of residents against insurers domiciled in reciprocal states.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 56 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1386. Exemption from legal process during pendency of liquidation.

Compiler's Comments

Source: Section 57 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1387. Interstate priorities.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 58 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1388. Subordination of claims for noncooperation of ancillary receiver.

Compiler's Comments

2001 Amendment: Chapter 227 at end substituted "33-2-1371(8)" for "33-2-1371(7)"; and made minor changes in style. Amendment effective October 1, 2001.

Source: Section 59 of the Insurers Supervision, Rehabilitation, and Liquidation Model Act, promulgated by the National Association of Insurance Commissioners in 1977.

33-2-1394. Settlement of actions against rehabilitator, liquidator, and employees — court approval — applicability.

Compiler's Comments

1995 Amendment: Chapter 379 in (4)(a), at beginning of first sentence, inserted exception clause and after "action" inserted "by a third party" and inserted second sentence concerning a legal action filed by a liquidator or liquidation estate against a former special deputy liquidator. Amendment effective April 12, 1995.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Part 14

Certificates of Insurance Model Act

Part Compiler's Comments

Effective Date: Section 9, Ch. 303, L. 2013, provided: "[This act] is effective July 1, 2013."

Applicability: Section 10, Ch. 303, L. 2013, provided: "[This act] applies to certificates of insurance that are prepared, issued, requested, or required on property, operations, or risks located in this state on or after October 1, 2013."

Part 15

Regulation of Controlled Insurers and Controlling Producers

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 596, L. 1993, provided: "A statement of intent is required for this bill because the department of insurance is granted authority to adopt rules for the administration and enforcement of laws regulating reinsurance intermediaries, managing general agents, holding company systems, insurer financial audits, and examinations and standards for companies considered to be in hazardous financial condition.

The legislature contemplates that rules adopted by the department should, at a minimum, endeavor to create an insurer regulatory structure in Montana that is reasonable and effective, that substantially resembles the model regulatory structure developed by the national association of insurance commissioners, that is eligible for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, and that encourages the startup and expansion of insurance companies domiciled in Montana."

Part Administrative Rules

Title 6, chapter 6, subchapter 34, ARM Companies considered to be in hazardous financial condition.

Title 6, chapter 6, subchapter 35, ARM Annual audited reports and establishing accounting practices and procedures to be used in annual statements.

Title 6, chapter 6, subchapter 36, ARM Life and health reinsurance agreements.

Title 6, chapter 6, subchapter 37, ARM Reporting by holding company systems.

Title 6, chapter 6, subchapter 38, ARM Credit for reinsurance.

Part Case Notes

Requirement That Attorney Submit Detailed Descriptions of Services Violative of Client Confidentiality: When presented with the question of whether an attorney licensed to practice in Montana or admitted pro hac vice may be required by an insurer's billing and practice rules to submit detailed descriptions of professional services to outside persons or entities, such as third-party insurance auditors, without first obtaining the informed consent of the client, insurers cited U.S. v. Mass. Institute of Technology, 129 F3d 681 (1st Cir. 1997), in claiming that as agents of insurers, third-party auditors are part of a privileged community or magic circle within which confidential information may be shared without waiver of attorney-client privilege or work product doctrine. The insurers also cited Indian Law Resource Center v. Dept. of Interior, 477 F. Supp. 144 (D. D.C. 1979), for the proposition that an auditor is a confidential agent of a privileged party, so disclosure of attorney fee information did not waive any privilege. The Supreme Court found neither case persuasive, concluding that third-party auditors are not confidential agents of insureds, but function rather as agents of insurers, and thus are not within the magic circle of confidentiality. Rather, disclosure of detailed billing statements to third-party auditors constitutes disclosure to a potential adversary because there is always the possibility of disputes between auditors and defense counsel and their clients that could result in litigation. As possible adversaries, auditors stand in potential conflict with the interests of insureds in competent representation by defense counsel who exercise their independent professional judgment. The court looked to Rule 1.6 of the Rules of Professional Conduct, which extends to all communications between insureds and defense counsel, making it broader in both scope and protection than the attorney-client privilege and the work product doctrine. Although disclosures of billing information to insurers are permissible because insurers are impliedly authorized to carry out representation, disclosure to third-party auditors is not impliedly authorized. The court also rejected the insurers' argument that insureds' consent by contract to disclosure of billing statements comports with Rule 1.6. An insured executing a liability policy with an insurer cannot know at that time what kind of claim will be brought against that insured, what the issues will be, what kind of services will be undertaken by defense counsel, or the legal consequences that might result from the disclosure of billing information to a third-party auditor. Under Rule 1.6, for an insured to make a fully informed consent to disclosure of detailed billing statements, the consent must be contemporaneous with the facts and circumstances of which the insured should be aware. Thus, disclosure by defense counsel of detailed descriptions of professional services to third-party auditors without first obtaining the informed consent of the insured violates confidentiality under the Rules of Professional Conduct. In re Rules of Professional Conduct & Insurer Imposed Billing Rules & Procedures, 2000 MT 110, 299 M 321, 2 P3d 806, 57 St. Rep. 433 (2000), distinguishing U.S. v. Schwimmer, 892 F2d 237 (2nd Cir. 1989).

33-2-1501. Definitions.

Compiler's Comments

2015 Amendment: Chapter 370 in definition of insurer substituted (b) relating to exceptions for former (b) and (c) that read: "(b) With regard to part 15 only, the following are not insurers:

(i) risk retention groups as defined in:

(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or

(C) Title 33, chapter 11, part 1;

(ii) residual market pools and joint underwriting authorities or associations; or

(iii) captive insurers.

(c) With regard to parts 16 and 17, captive insurers are not insurers but captive risk retention groups are insurers"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

2013 Amendment: Chapter 208 in definition of managing general agent inserted (b)(v) and (b)(vi) regarding resident domestic farm mutual insurer; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 227 in (8)(b) inserted "With regard to part 15 only"; inserted (8)(c) regarding parts 16 and 17; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

33-2-1510. Minimum standards.

Compiler's Comments

1995 Amendment: Chapter 379 in (4), at end, substituted "the jurisdiction in which the controlling producer is domiciled" for "the controlling producer's domiciliary jurisdiction"; in (8) inserted first sentence concerning rates and terms of charges and fees being contained in the contract and in second sentence, near beginning, inserted "controlling producer's"; and in (10) inserted first sentence concerning a limit on a controlling producer's writings being contained in the contract.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-2-1517. Rulemaking authority.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 596, L. 1993, provided: "A statement of intent is required for this bill because the department of insurance is granted authority to adopt rules for the administration and enforcement of laws regulating reinsurance intermediaries, managing general agents, holding company systems, insurer financial audits, and examinations and standards for companies considered to be in hazardous financial condition.

The legislature contemplates that rules adopted by the department should, at a minimum, endeavor to create an insurer regulatory structure in Montana that is reasonable and effective, that substantially resembles the model regulatory structure developed by the national association of insurance commissioners, that is eligible for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, and that encourages the startup and expansion of insurance companies domiciled in Montana."

Administrative Rules

Title 6, chapter 6, subchapter 34, ARM Companies considered to be in hazardous financial condition.

Title 6, chapter 6, subchapter 35, ARM Annual audited reports and establishing accounting practices and procedures to be used in annual statements.

Part 16
Regulation of Managing General Agents

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 596, L. 1993, provided: "A statement of intent is required for this bill because the department of insurance is granted authority to adopt rules for the administration and enforcement of laws regulating reinsurance intermediaries, managing general agents, holding company systems, insurer financial audits, and examinations and standards for companies considered to be in hazardous financial condition.

The legislature contemplates that rules adopted by the department should, at a minimum, endeavor to create an insurer regulatory structure in Montana that is reasonable and effective, that substantially resembles the model regulatory structure developed by the national association of insurance commissioners, that is eligible for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, and that encourages the startup and expansion of insurance companies domiciled in Montana."

33-2-1602. Managing general agent — required contract provisions.

Case Notes

Insurance Commissioner's Action Involving Alleged Insurance Code Violations by Managing General Agent Not Precluded by Existence of Federal Lawsuit by Insurer Alleging Private Breach of Contract Claims by Managing General Agent — Commissioner's and Insurer's Interests Not Sufficiently Aligned to Grant Writ of Prohibition Based on Issue Preclusion. Victory Ins. Co. v. Downing, 2023 MT 139, 413 Mont. 80, 532 P.3d 850.

Managing General Agent Provisions Contain Two Separate Data-Access Requirements, One for Insurers and One for Insurance Commissioner — Commissioner's Action to Enforce Regulations Was Separate From Private Contract Dispute — District Court's Refusal to Grant Writ of Prohibition Against Commissioner Upheld. Victory Ins. Co. v. Downing, 2023 MT 139, 413 Mont. 80, 532 P.3d 850.

33-2-1605. Penalties and liabilities.

Compiler's Comments

1995 Amendment: Chapter 379 in (4), at end, substituted "creditors" for "auditors".

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Part 17
Regulation of Reinsurance Intermediaries

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 596, L. 1993, provided: "A statement of intent is required for this bill because the department of insurance is granted authority to adopt rules for the administration and enforcement of laws regulating reinsurance intermediaries, managing general agents, holding company systems, insurer financial audits, and examinations and standards for companies considered to be in hazardous financial condition.

The legislature contemplates that rules adopted by the department should, at a minimum, endeavor to create an insurer regulatory structure in Montana that is reasonable and effective, that substantially resembles the model regulatory structure developed by the national association of insurance commissioners, that is eligible for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, and that encourages the startup and expansion of insurance companies domiciled in Montana."

33-2-1701. Licensure of reinsurance intermediaries.

Compiler's Comments

2019 Amendment: Chapter 60 in (4)(b) in first sentence near middle substituted "appoint an agent" for "designate the commissioner as the agent" and near end substituted "provided for by 33-1-605" for "provided for by this title for designation of service of process upon unauthorized insurers", deleted former second sentence that read: "The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served", and in third sentence near middle substituted "appointed agent" for "designated agent". Amendment effective July 1, 2019.

1999 Amendment: Chapter 416 deleted former second sentence in (5)(b) that read: "The document is privileged and is not subject to public disclosure under Title 2, chapter 6, part 1." Amendment effective October 1, 1999.

Part 19
Risk-Based Capital for Insurers

Part Compiler's Comments

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-2-1902. Definitions.

Compiler's Comments

2017 Amendment: Chapter 9 inserted definitions of health organization and insurer; in definition of adjusted RBC report substituted "33-2-1903(6)" for "33-2-1903(5)"; in definition of domestic insurer after "any insurance company" inserted "or health organization"; in definition of foreign insurer at end inserted "or a health organization licensed to do business in this state under Title 33, chapter 31, but not domiciled in this state"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 63 in definition of life or disability insurer inserted (d) and (e) concerning fraternal benefit societies and health service corporations; and made minor changes in style. Amendment effective February 27, 2015.

Chapter 320 in definition of RBC level in (b)(i) inserted "except the state fund as provided in subsection (10)(b)(ii)", inserted (b)(ii) regarding state fund, in (d)(i) inserted "except for the state fund as provided in subsection (10)(d)(ii)", and inserted (d)(ii) regarding state fund; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

1997 Amendment: Chapter 531 in definition of life or disability insurer inserted (c) to include an insurer engaged solely in reinsurance of life or disability contracts; in definition of property and casualty insurer inserted (a)(ii) regarding an insurance company engaged solely in reinsurance of property and casualty contracts and inserted (a)(iii) regarding an insurance company engaged in the business of surety and marine insurance; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

33-2-1903. RBC reports.

Compiler's Comments

2017 Amendment: Chapter 9 inserted (4) relating to the determination of a health organization's RBC; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2011 Amendment: Chapter 227 at beginning of (1) deleted "Except as provided in 33-28-107(4)(b)"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

2009 Amendment: Chapter 28 in (1) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective July 1, 2009.

33-2-1904. Company action level event.

Compiler's Comments

2017 Amendment: Chapter 9 inserted (1)(a)(iv) relating to total adjusted capital requirements; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

2015 Amendment: Chapter 63 in (1)(a)(ii)(A) substituted "by 3" for "by 2.5". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2011 Amendment: Chapter 227 inserted (1)(a)(iii) relating to total adjusted capital; in (4) substituted "propose revisions intended to" for "set forth proposed revisions that will"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

33-2-1907. Mandatory control level event.

Compiler's Comments

2017 Amendment: Chapter 9 in (2)(a) near beginning substituted "a life or disability insurer or a health organization" for "a life insurer". Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

33-2-1910. Supplemental provisions — rules — exemption.

Compiler's Comments

2017 Amendment: Chapter 9 inserted (4) relating to exemption of applications for certain domestic health organizations. Amendment effective October 1, 2017.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

Part 20
Pharmacy Audit Integrity Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 2013.

Part 21
Corporate Governance Annual Disclosure

Part Compiler's Comments

Effective Date: Section 24, Ch. 9, L. 2017, provided that this part is effective January 1, 2018.

Severability: Section 23, Ch. 9, L. 2017, was a severability clause.

Part Administrative Rules

Title 6, chapter 6, subchapter 87, ARM Corporate governance annual disclosure.

33-2-2105. Rulemaking authority.

Administrative Rules

Title 6, chapter 6, subchapter 87, ARM Corporate governance annual disclosure.

Part 22
Private Air Ambulance Services

Part Compiler's Comments

Effective Date — Applicability: Section 14, Ch. 210, L. 2017, provided: "[This act] is effective on passage and approval and applies to private air ambulance membership agreements sold, solicited, or negotiated on or after [the effective date of this act] for purposes of out-of-network coverage of out-of-pocket expenses in excess of deductibles, copays, and coinsurance." Effective April 20, 2017.

Severability: Section 13, Ch. 210, L. 2017, was a severability clause.

33-2-2211. Recordkeeping requirements.

Compiler's Comments

Code Commissioner Correction: In (1) after "private air ambulance" the code commissioner inserted "service" to make the language consistent with the rest of Ch. 210, L. 2017.

Part 23
Air Ambulance Providers and Insurers

Part Compiler's Comments

Effective Date: Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

Part Administrative Rules

Title 6, chapter 6, subchapter 86, ARM Air ambulance arbitration.

33-2-2306. Insurance commissioner duties — independent reviewer qualifications.

Administrative Rules

Title 6, chapter 6, subchapter 86, ARM Air ambulance arbitration.

Part 24
Pharmacy Benefit Manager Oversight

Administrative Rules

Title 6, chapter 6, subchapter 79, ARM Pharmacy benefit managers.

33-2-2401. Short title — purpose.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2402. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 157, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2403. Licensing required.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2404. Pharmacy benefit manager prohibited practices.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 157, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2405. Marketing and advertising.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2406. Pharmacy benefit manager transparency to carriers and plan sponsors.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2407. Transparency report to the commissioner.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2408. Pharmacy benefit manager appeals report.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2409. Network adequacy.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2410. Federal 340B drug pricing program.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 259, L. 2023, amended sec. 26, Ch. 501, L. 2021, by extending the termination date imposed by Ch. 501 to June 1, 2025. Effective April 25, 2023.

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective on passage and approval. Approved May 12, 2021.

Termination: Section 26, Ch. 501, L. 2021, provided: "[Section 10(3)] [33-2-2410(3)] terminates June 1, 2023."

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2411. Enforcement — penalties.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-2-2412. Rulemaking.

Compiler's Comments

Effective Date: Section 25, Ch. 501, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

Part 25
Regulatory Waivers

33-2-2501. Regulatory sandbox waiver — property or casualty insurers — application — considerations by the commissioner — limitations — rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Termination: Section 5, Ch. 546, L. 2023, provided: "[This act] terminates July 30, 2029."

Severability: Section 4, Ch. 546, L. 2023, was a severability clause.

CHAPTER 3
DOMESTIC STOCK AND MUTUAL INSURERS

Part 1
General Provisions

33-3-103. Applicability of general corporation statutes.

Compiler's Comments

2019 Amendment: Chapter 271 in (2) near middle substituted "35-14-1401 through 35-14-1405" for "35-1-931 through 35-1-935". Amendment effective June 1, 2020.

1991 Amendment: In (2) substituted "35-1-931 through 35-1-935" for "35-1-901 through 35-1-912". Amendment effective January 1, 1992.

1987 Amendment: Inserted (2) referring to voluntary dissolution of domestic insurer.

33-3-104. Extinguishment of unused corporate charters.

Compiler's Comments

1981 Amendment: Substituted "part 13" for "part 9" in (2).

33-3-105. Commissioner's request of biographical information.

Compiler's Comments

2019 Amendment: Chapter 62 inserted (1)(f) regarding the state fund; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2001.

Part 2
Formation

33-3-201. Incorporation.

Compiler's Comments

2019 Amendment: Chapter 117 in (3) in first sentence after "incorporation" deleted "in triplicate"; and made minor changes in style. Amendment effective July 1, 2019.

2003 Amendment: Chapter 380 in (3) in first sentence after "incorporation in" substituted "triplicate" for "quadruplicate"; and made minor changes in style. Amendment effective October 1, 2003.

33-3-202. Articles of incorporation — approval.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 62 in (1) in first sentence substituted "an electronic copy of the proposed articles" for "the triplicate originals of the articles", near end of third sentence after "shall approve" deleted "in writing each set of", in fourth sentence near end substituted "shall provide a written statement" for "shall return them to the proposed incorporators, together with a written statement" (rendered void by Ch. 117), substituted current fifth sentence for former text that read: "The commissioner shall forward the approved articles of incorporation to the incorporators. The incorporators shall subsequently file one set of the articles of incorporation with the secretary of state and one set certified by the secretary of state with the commissioner" (rendered void by Ch. 117), and deleted former last sentence that read: "The remaining set of articles must be made a part of the corporation's record"; and in (2) near middle substituted "return the articles" for "return all sets of the proposed articles" (rendered void by Ch. 117). Amendment effective October 1, 2019.

Chapter 117 in (1) in first sentence substituted "proposed articles" for "the triplicate originals of the articles", near end of third sentence after "shall approve" deleted "in writing each set of", near end of fourth sentence substituted "and shall provide in writing" for "and shall return them to the proposed incorporators, together with a written statement of", inserted fifth sentence regarding forwarding the articles and fees to the secretary of state, deleted former fifth and sixth sentences that read: "The commissioner shall forward the approved articles of incorporation to the incorporators. The incorporators shall subsequently file one set of the articles of incorporation with the secretary of state and one set certified by the secretary of state with the commissioner", and in last sentence substituted "approved articles" for "remaining set of articles" (rendered void by Ch. 62); in (2) near end substituted "and shall provide" for "and shall return all sets of the proposed articles of incorporation to the proposed incorporators, together with"; and in (3) in middle after "secretary of state" deleted "and completion of the filing with the commissioner required in subsection (1)". Amendment effective July 1, 2019.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1999 Amendments — Composite Section: Chapter 316 in (1) at end of first sentence deleted "together with the filing fees therefor specified in 33-2-708"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 472 in (1) near middle of first sentence after "deliver the" substituted "triplicate" for "quadruplicate" and near middle of sixth sentence after "one set" inserted "certified by the secretary of state" and at end deleted "bearing the certification of the secretary of state, and one set with the county clerk of the county wherein is to be located the corporation's principal place of business; and"; and made minor changes in style. Amendment effective October 1, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1983 Amendment: Transferred duties of the attorney general to the state commissioner of insurance by the following: in second sentence of (1), substituted "The commissioner shall examine the proposed articles of incorporation" for "The commissioner shall submit the quadruplicate originals of the proposed articles of incorporation to the attorney general for examination"; in the third sentence of (1) and in (2), substituted "commissioner" for "attorney general"; in the third sentence of (1), following "not in conflict with the constitution and laws of the United States or of this state, he shall" deleted "so certify and return such certificate and all sets of the articles to the commissioner. (2) When the articles of incorporation have been approved by the attorney general, the commissioner shall also"; in (1), deleted two references to the certificate of the attorney general; in (2), following "he shall refuse to approve the same and shall return" deleted "the quadruplicate sets thereof to the commissioner, together with a written statement of the reasons for his refusal to approve. The commissioner shall return"; and at the end of (2), substituted "a written statement of the reasons for his refusal to approve." for "the written statement of the attorney general."

33-3-203. Amendment of articles of incorporation — grounds for disapproval.

Compiler's Comments

2019 Amendment: Chapter 117 in (3) in second, third, and fourth sentences and in (4) in first sentence in two places substituted "articles of amendment" for "certificate"; in (3) near middle of first sentence substituted "set forth" for "make in triplicate under its corporate seal a certificate, sometimes referred to as "articles of amendment", setting forth", at end of first sentence inserted "in articles of amendment", near end of third sentence after "commissioner" deleted "the triplicate originals of", at end of fourth sentence substituted "amendment must be approved" for "commissioner shall approve in writing each of the triplicate originals and return them to the insurer", deleted former fifth sentence that read: "The insurer shall subsequently file one set of endorsed articles of amendment with the secretary of state, shall file one set with the commissioner, bearing the certification of the secretary of state, and shall retain the remaining set in the corporate records", and at end of fifth sentence substituted "it has been filed with the secretary of state" for "the filings have been completed"; in (4) near end of first sentence substituted "shall provide" for "shall return the triplicate certificate of amendment to the insurer, together with"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendment: Chapter 227 in (3) near beginning of first sentence substituted "make in triplicate" for "make in quadruplicate", in third and fourth sentences substituted "triplicate originals" for "quadruplicate originals", and near middle of fifth sentence after "certification of the secretary of state" deleted "and one set with the county clerk of the county in which the insurer's principal place of business will be located"; in (4) near middle of first sentence substituted "triplicate certificate" for "quadruplicate certificate"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 316 in (3) at end of third sentence deleted "together with the filing fee specified therefor in 33-2-708"; and made minor changes in style. Amendment effective January 1, 2000.

33-3-204. Initial qualifications — domestic mutuals.

Compiler's Comments

1981 Amendment: Substituted "any of the kinds of insurance as are permitted under 33-2-108" for "any one of the kinds of insurance listed in the schedule contained in subsection (2) of this section" in (1); and substituted (2) (see 1981 Session Law) for guidelines tied to a schedule in (2) (see 1959 Session Law for full text of deleted material).

33-3-205. Formation of mutual insurer — bond.

Compiler's Comments

1981 Amendment: Substituted "applications for insurance to raise surplus funds to qualify" for "any applications for insurance required under 33-3-204 as qualification" in (1); increased the bond or cash deposit amount from $15,000 to $50,000 in three places in (1) and (2).

33-3-206. Applications for insurance in formation of mutual insurer.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-3-215. Mutualization of stock insurer.

Compiler's Comments

2019 Amendment: Chapter 271 in (2)(e) near middle substituted "Title 35, chapter 14, part 13" for "Title 35, chapter 1, part 8"; and made minor changes in style. Amendment effective June 1, 2020.

1981 Amendment: Substituted "part 13" for "part 9" in (3).

33-3-216. Converting mutual insurer to stock insurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-3-217. Mergers and consolidations of stock insurers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Not Codified: Subsections (1) through (3) of section 40-4750, R.C.M. 1947, relating to extinguishment of unused charters granted under pre-1959 Montana Insurance Code, were not codified in the MCA because the time limits enumerated therein have expired. This clause has not been repealed and is still valid law. Citation may be made to sec. 467, Ch. 286, L. 1959.

33-3-218. Mergers and consolidations of mutual insurers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Management

33-3-301. Bylaws of mutual.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-3-302. Bylaws of stock insurer — modification.

Compiler's Comments

2001 Amendment: Chapter 227 inserted (2) regarding filing and disapproval of bylaws; and made minor changes in style. Amendment effective October 1, 2001.

33-3-303. Meetings of stockholders or members.

Compiler's Comments

2001 Amendment: Chapter 227 at beginning of (1) inserted exception clause; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 531 in (3), at beginning, inserted "Except with the commissioner's consent"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

33-3-304. Proxies — corrupt practices.

Compiler's Comments

2017 Amendment: Chapter 396 in (3) deleted former last sentence that read: "Violation of this section shall be punishable as provided in 33-1-104." Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

33-3-305. Directors — number and election.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of first sentence of (2), after "elected", deleted "from and" and inserted second sentence that read: "A majority of directors must be elected from the members or stockholders of the domestic insurer"; and made minor changes in style.

33-3-307. Bonding of officers and employees.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) at beginning of first sentence substituted "When acting in a fiduciary capacity, officers and employees" for "The president, secretary, and treasurer", after "shall" deleted "each file with the commissioner and", after "maintain" deleted "in force so long as that individual is an officer", and after "bond" deleted "in an amount set by the commissioner by rule and" and in third sentence after "officers" inserted "and employees"; deleted former (4) that read: "(4) The insurer shall provide for the bonding by authorized corporate surety of all other officers in any way responsible for the handling of the funds of the insurer"; in (4) at end after "officer" inserted "or employee"; inserted (5) allowing rulemaking by the commissioner; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 531 in (1), in first sentence after "mutual insurer", inserted "or stock insurer" and after "fidelity bond in" substituted "an amount set by the commissioner by rule and" for "the sum of $10,000" and inserted second sentence requiring the Commissioner to consider certain factors in determining the bond amount; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

Administrative Rules

ARM 6.6.6601 Fidelity bond.

33-3-308. Prohibited pecuniary interest of officials.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-3-309. Management and exclusive agency contracts.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 4
Finance

33-3-401. Home office and records — administrative or civil penalty for unlawful removal of records or assets.

Compiler's Comments

2017 Amendment: Chapter 396 in (3) deleted former second sentence that read: "Any person who removes or attempts to remove all or a material part of records or assets from the home office, other place of business, or safekeeping of the insurer in this state with the intent to remove the records or assets from this state or who conceals or attempts to conceal records or assets from the commissioner, in violation of this subsection, shall upon conviction be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both a fine and imprisonment in the discretion of the court." Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2013 Amendment: Chapter 169 in (4)(c) substituted "33-2-604(2)" for "33-2-604(3)"; and made minor changes in style. Amendment effective April 9, 2013.

2003 Amendment: Chapter 493 in (3) near end of first sentence after "advance" deleted "of such removal or concealment of such records or assets or material part thereof from the commissioner"; inserted (5) subjecting an insurer that fails to maintain records and make them available to the commissioner's staff to penalties and procedures; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

1991 Amendment: Inserted second sentence in (1) that reads: "Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or his duly constituted examiner".

1981 Amendment: Substituted "part 13" for "part 9" in (3).

33-3-411. Contingent liability of mutual members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-3-412. Levy of contingent liability.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-3-424. Illegal dividends — administrative or civil penalty.

Compiler's Comments

2017 Amendment: Chapter 396 in (1) after "33-3-423" deleted "shall upon conviction thereof be guilty of a misdemeanor and". Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

33-3-431. Borrowed surplus.

Compiler's Comments

2011 Amendment: Chapter 108 in (1) in second sentence after "higher than the prime rate" substituted "published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans" for "of major New York banks as published in the Wall Street Journal edition". Amendment effective April 1, 2011.

Effective Date — Applicability: Section 4, Ch. 108, L. 2011, provided: "[This act] is effective on passage and approval [approved April 1, 2011] and applies to all interest rate agreements governed by 7-8-2304, 31-1-107, or 33-3-431 made on or after [the effective date of this act]." Effective April 1, 2011.

2005 Amendment: Chapter 469 in (1) in second sentence after "rate not" inserted "to exceed the" and after "25-9-205" inserted "or a rate that is 6 percentage points per year higher than the prime rate of major New York banks as published in the Wall Street Journal edition dated 3 business days prior to the execution of the agreement" and in third sentence at beginning inserted "The agreement must specify" and at end deleted "must be stipulated in the agreement"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 379 in (1), in second sentence after "25-9-205", substituted "and whether the interest constitutes a liability of the insurer must be stipulated" for "which interest shall or shall not constitute a liability of the insurer as to its funds other than such expenses of surplus, as stipulated"; in (2), in second sentence after "until", inserted "the money or interest, or both, are"; in (3) and (4), near beginning after "mutual", inserted "or stock"; in (4), at beginning of second sentence, substituted "Repayment of either principal or interest on the loan may not" for "No repayment of such loan shall" and near middle, after "mutual", inserted "or stock"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1991 Amendment: In second sentence in (1) substituted "at a rate no greater than the rate established in 25-9-205" for "not exceeding 6% per annum".

33-3-432. Impairment of capital or assets.

Compiler's Comments

1999 Amendment: Chapter 304 in (2) substituted reference to chapter 12 for reference to chapter 2, part 8; and made minor changes in style. Amendment effective July 1, 1999.

1981 Amendments: Chapter 303 deleted "or 33-3-501" after "33-3-204" in (1).

Chapter 575 substituted "part 13" for "part 9" in (3).

33-3-433. Assessment of stockholders or members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-3-436. Mutual member's share of assets on liquidation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-3-441. Equity securities of domestic stock insurance company — statement of ownership.

Compiler's Comments

2003 Amendment: Chapter 380 substituted (2) providing reporting requirements with respect to persons obtaining 10% or more of any class of equity security in domestic stock insurance company for former (2) that read: "(2) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company shall file with the commissioner, within 10 days after he becomes such beneficial owner, director, or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter"; deleted former (3) that read: "(3) If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month"; inserted (3) exempting certain persons from reporting requirements; and made minor changes in style. Amendment effective October 1, 2003.

Source: Sections 33-3-441 through 33-3-447 are derived from An Act Concerning Insider Trading of Domestic Stock Insurance Company Equity Securities, promulgated by the National Association of Insurance Commissioners. This section is derived from sections 1 and 6 of that Act. The Act has been adopted by every state except Maine.

Administrative Rules

ARM 6.6.1301 through 6.6.1326 Proxies, consents, and authorizations of domestic stock insurers.

ARM 6.6.1401 through 6.6.1409 Proxies, consents, and authorizations — special provisions applicable to election contests.

33-3-442. Inside trading of securities — profit inures to company — limitation of action to recover — rules.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Sections 33-3-441 through 33-3-447 are derived from An Act Concerning Insider Trading of Domestic Stock Insurance Company Equity Securities, promulgated by the National Association of Insurance Commissioners. This section is derived from section 2 of that Act. The Act has been adopted by every state except Maine.

33-3-443. Short sales of equity securities prohibited — time for delivery after sale.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Sections 33-3-441 through 33-3-447 are derived from An Act Concerning Insider Trading of Domestic Stock Insurance Company Equity Securities, promulgated by the National Association of Insurance Commissioners. This section is derived from section 3 of that Act. The Act has been adopted by every state except Maine.

33-3-444. Exemptions — securities held in an investment account — primary or secondary market — rules.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Sections 33-3-441 through 33-3-447 are derived from An Act Concerning Insider Trading of Domestic Stock Insurance Company Equity Securities, promulgated by the National Association of Insurance Commissioners. This section is derived from section 4 of that Act. The Act has been adopted by every state except Maine.

33-3-445. Exemptions — arbitrage transactions.

Compiler's Comments

Source: Sections 33-3-441 through 33-3-447 are derived from An Act Concerning Insider Trading of Domestic Stock Insurance Company Equity Securities, promulgated by the National Association of Insurance Commissioners. This section is derived from section 5 of that Act. The Act has been adopted by every state except Maine.

33-3-446. Exemptions — registered securities — holding by less than 100 persons.

Compiler's Comments

Source: Sections 33-3-441 through 33-3-447 are derived from An Act Concerning Insider Trading of Domestic Stock Insurance Company Equity Securities, promulgated by the National Association of Insurance Commissioners. This section is derived from section 7 of that Act. The Act has been adopted by every state except Maine.

Administrative Rules

ARM 6.6.1301 Applicability of rules relating to proxies, consents, and authorizations of domestic stock insurers.

33-3-447. Rules of commissioner — classifications — effect.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Sections 33-3-441 through 33-3-447 are derived from An Act Concerning Insider Trading of Domestic Stock Insurance Company Equity Securities, promulgated by the National Association of Insurance Commissioners. This section is derived from section 8 of that Act. The Act has been adopted by every state except Maine.

Administrative Rules

ARM 6.6.1301 through 6.6.1326 Proxies, consents, and authorizations of domestic stock insurers.

ARM 6.6.1401 through 6.6.1409 Proxies, consents, and authorizations — special provisions applicable to election contests.

33-3-450. Purpose.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

33-3-451. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

33-3-452. Use of book-entry systems — rules.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

33-3-453. Deposit of securities by insurance companies.

Compiler's Comments

2017 Amendment: Chapter 151 in (2) substituted current text in introduction and (2)(a) for "Securities deposited with a clearing corporation or held in the federal reserve book-entry system may not be withdrawn by the insurance company without the approval of the commissioner"; in (2)(b) at beginning deleted "An insurance company holding securities in the manner provided for in this section"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

Effective Date: This section is effective October 1, 2003.

Part 5
Insurance Operations

33-3-502. Solicitations in other states.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-3-503. Membership in mutuals.

Case Notes

Ambiguities in Policy: The rule that any ambiguity in the policy shall be resolved against the insurer, since the latter is responsible for the form of the contract, is applicable to contracts between mutual death benefit societies and their members. McDonald v. N. Benefit Ass'n, 113 M 595, 131 P2d 479 (1942).

Part 6
Dissolution and Liquidation

Part Compiler's Comments

Source: This part is based on section 611.74 of Wisconsin Insurance Laws.

33-3-601. Voluntary dissolution of domestic insurers — plan of dissolution.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 62 in (1) in first sentence inserted "or a for-profit domestic mutual insurer"; and in (2) in first sentence before "domestic mutual insurer" inserted "nonprofit". Amendment effective October 1, 2019.

Chapter 271 in (1) in first sentence near middle substituted "35-14-1402 or voluntarily dissolves under 35-14-1401" for "35-1-932 or voluntarily dissolves under 35-1-931", in fifth sentence substituted "35-14-1401 through 35-14-1409" for "Title 35, chapter 1, part 9, except that 35-1-938(4) does not apply", in sixth sentence substituted "35-14-1401 through 35-14-1404" for "35-1-931 through 35-1-935", and in seventh sentence substituted "35-14-125" for "35-1-217"; and made minor changes in style. Amendment effective June 1, 2020.

2017 Amendment: Chapter 151 in (1) near beginning before "insurer" inserted "domestic stock" and near middle after "the insurer may dissolve under" substituted "Title 35, chapter 1, part 9" for "35-1-931 through 35-1-935"; inserted (2) requiring insurers to file plans of dissolution with the commissioner, requiring the commissioner to approve of dissolution, and requiring the commissioner to petition for liquidation or rehabilitation if the voluntary dissolution is not approved; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

1991 Amendment: In first sentence substituted "35-1-932" for "35-1-902 or 35-1-903" and substituted "35-1-931" for "35-1-901", in fifth sentence substituted "35-1-931 through 35-1-935" for "35-1-903 through 35-1-912" and substituted "35-1-938(4)" for "35-1-906(3)", in sixth sentence substituted "35-1-931 through 35-1-935" for "35-1-901 through 35-1-912", and in seventh sentence substituted "35-1-217" for "35-1-912". Amendment effective January 1, 1992.

33-3-602. Conversion to involuntary liquidation.

Compiler's Comments

2019 Amendment: Chapter 271 in first sentence near middle substituted "Title 35, chapter 14, part 14" for "Title 35, chapter 1, part 9"; and made minor changes in style. Amendment effective June 1, 2020.

2017 Amendment: Chapter 151 substituted "Title 35, chapter 1, part 9, or Title 35, chapter 2, part 7" for "35-1-931 and 35-1-932"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Substituted "35-1-931 and 35-1-932" for "35-1-901, 35-1-902, or 35-1-903". Amendment effective January 1, 1992.

33-3-603. Revocation of voluntary dissolution.

Compiler's Comments

2019 Amendment: Chapter 271 substituted "35-14-1404" for "35-1-934"; and made minor changes in style. Amendment effective June 1, 2020.

2017 Amendment: Chapter 151 after "35-1-934" inserted "or 35-2-724". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

1991 Amendment: Substituted "35-1-934" for "35-1-907 or 35-1-908". Amendment effective January 1, 1992.

33-3-604. Distribution of assets of mutual insurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 7
Disclosure of Material Transactions

Part Compiler's Comments

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

CHAPTER 4
FARM MUTUAL INSURERS

Part 1
General Provisions

33-4-101. Scope of chapter — provisions applicable.

Compiler's Comments

2015 Amendment: Chapter 63 in (3) near end inserted reference to chapter 3, part 6. Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2005 Amendment: Chapter 469 in (3) after "33-2-502" deleted "33-2-532 through 33-2-535"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 380 at end of (3) inserted reference to chapter 19. Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 in (3) near end in series of statutory references inserted "33-2-1501; 33-2-1517(2)". Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 in (3) in list of references after "7" inserted "12, and 13"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 158 deleted former (2) that read: "All insurers qualifying under subsection (1) may be referred to as "farm mutual insurers""; in (3) inserted references to part 16 of chapter 2 and to 33-3-309; and made minor changes in style.

1993 Amendment: Chapter 451 in (4) inserted "33-2-112" in list of statutory references; and made minor changes in style.

1981 Amendment: Substituted "part 13" for "part 9" in (4).

33-4-102. Definitions.

Compiler's Comments

1997 Amendment: Chapter 158 in definitions of county mutual insurer and state mutual insurer inserted "a farm mutual" and "and liability risks"; in definition of county mutual insurer, after "insure", substituted "property and liability risks" for "only property"; inserted definition of farm mutual insurer; and made minor changes in style.

33-4-103. Corporate powers in general.

Compiler's Comments

2017 Amendment: Chapter 151 inserted (3) allowing insurance corporations to form subsidiary entities for certain purposes and providing requirements. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Part 2
Formation

33-4-202. Declaration of intention to incorporate — articles of incorporation.

Compiler's Comments

2019 Amendment: Chapter 117 in (1)(a) in two places substituted "persons" for "incorporators"; in (1)(b) at beginning before "proposed articles" deleted "three copies of"; in (2)(i) near middle substituted "persons signing the declaration under subsection (1)(a)" for "incorporators"; deleted former (3) that read: "At the time of filing of the articles of incorporation as provided in subsection (1), the incorporators shall pay to the commissioner a filing fee of $10. The commissioner shall deposit the fees with the state treasurer to the credit of the general fund"; and made minor changes in style. Amendment effective July 1, 2019.

2003 Amendment: Chapter 380 at beginning of (1)(b) before "copies" substituted "three" for "four"; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 531 in (1)(b), at beginning, inserted "four copies of", after "executed" deleted "in triplicate", and after "incorporators" substituted "The signatures of the incorporators must be notarized" for "and acknowledged by each before a person authorized to take and verify acknowledgments of conveyance of real property"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 379 in (1)(b) substituted "triplicate" for "quadruplicate"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-4-203. Approval of articles — commencement of corporate existence.

Compiler's Comments

2019 Amendment: Chapter 117 in (1) at end of first sentence substituted "articles must be approved" for "commissioner shall make a certificate of the facts" and inserted second sentence regarding the commissioner forwarding the articles and fees to the secretary of state; deleted former (3) that read: "When the proposed articles of incorporation have been approved by the commissioner, the commissioner shall endorse the approval upon each set of the articles and forward three sets of articles to the incorporators. The incorporators shall file, with the required filing fee, one of the sets of articles with the secretary of state and one set certified by the secretary of state with the commissioner. The remaining set of articles must be made a part of the corporation's records"; in (3) near middle substituted "issuance of the certificate of incorporation by the secretary of state" for "approval of the articles by the commissioner and completion of the filings required in subsection (3)"; and made minor changes in style. Amendment effective July 1, 2019.

1999 Amendment: Chapter 472 in (1) near end after "United States" deleted "of America"; in (3) in first sentence after "forward" substituted "three" for "four" and in second sentence after "file" inserted "with the required filing fee", after "one set" inserted "certified by the secretary of state", and at end deleted "bearing the certification of the secretary of state, and one set with the county clerk of the county in which the principal place of business of the corporation is located and shall pay to the secretary of state and the county clerk the customary filing fees"; in (4) near end before "obtained" deleted "fulfilled the requirements for and has"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 531 in (3), near end of first sentence after "forward", substituted "four" for "three"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 379 in (1) deleted former first sentence that read: "Upon receipt of proposed articles of incorporation, the commissioner shall forward the proposed articles of incorporation to the attorney general for examination" and in two places in second sentence substituted "commissioner" for "attorney general" and at end, after "facts", deleted "and return it with the proposed articles to the commissioner"; in (3), in first sentence, substituted "commissioner" for "attorney general" and substituted "three" for "four"; in (4), before "commissioner", deleted "attorney general and"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 in first sentence of (3), after "set of the articles", deleted "file one set in his office" and after "forward" substituted "four" for "the other three"; and made minor changes in style.

33-4-204. Amendment of articles — change of status.

Compiler's Comments

2019 Amendment: Chapter 117 in (2)(b) and (3)(b) at end after "chapter" deleted "upon its articles of amendment being certified by the commissioner"; and in (4) at end of second sentence after "corporation" deleted "and attested by the corporate seal". Amendment effective July 1, 2019.

2017 Amendment: Chapter 151 in (2)(b) after "being certified by the commissioner" deleted "including the requirements of 33-4-206(2) and 33-4-401(1)"; inserted (3) regarding change of status from state mutual insurer to county mutual insurer; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2001 Amendment: Chapter 228 inserted (2) allowing a county mutual insurer to change status to a state mutual insurer; and made minor changes in style. Amendment effective April 12, 2001.

1997 Amendment: Chapter 531 inserted second sentence requiring the Commissioner to review the amended articles for compliance; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

33-4-206. Initial qualifications.

Compiler's Comments

2001 Amendment: Chapter 228 near middle of introductory clause after "organized in this state" inserted "or for an amended certificate of authority in the case of a county mutual insurer that is changing its status to that of a state mutual insurer pursuant to 33-4-204" and at end substituted "chapter" for "code"; near beginning of (2) after "state mutual insurer" inserted "or a county mutual insurer that has changed its status to that of a state mutual insurer pursuant to 33-4-204"; and made minor changes in style. Amendment effective April 12, 2001.

Part 3
Management

33-4-302. Bylaws — contents.

Compiler's Comments

2013 Amendment: Chapter 169 in (1)(e) substituted "month" for "date"; and made minor changes in style. Amendment effective April 9, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-4-309. Directors — election and term.

Compiler's Comments

2011 Amendment: Chapter 227 in middle of (1) after "ballot" inserted "or acclamation"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

33-4-311. Bonding of officers, managers, and employees.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) at beginning of first sentence substituted "When acting in a fiduciary capacity, officers, managers, and employees" for "The treasurer and secretary of an insurer" and at end after "duties" deleted "in such amount as is designated by the board of directors"; inserted (2) allowing rulemaking by the commissioner; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-4-312. Officers, agents, and employees not licensed — exception for liability insurance.

Compiler's Comments

2007 Amendment: Chapter 399 in (1) in two places substituted reference to agent for reference to insurance producer; in (2) in second sentence after "solicit" inserted "negotiate"; and made minor changes in style. Amendment effective May 3, 2007.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: At beginning of (1) inserted exception clause; inserted (2) requiring license to transact liability insurance; and made minor changes in phraseology.

33-4-313. Annual statement.

Compiler's Comments

1999 Amendment: Chapter 472 in introductory clause after "oath" deleted "affix the corporate seal to"; deleted former (7) that read: "(7) the amount of the losses claimed and not paid, with the reason for nonpayment"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 531 deleted former (2) that read: "(2) A report of an insurer's expenditures for educational purposes, if any, for the preceding year must be filed with the commissioner at the same time and in conjunction with the annual report of such insurer, as required under 33-4-404"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1987 Amendment: Deleted former (3) that read: "(3) A copy of such annual statement and report of expenditures for educational purposes shall be filed by each county mutual insurer with the county clerk and recorder of the county wherein is located its principal place of business."

33-4-314. Annual statement — exclusive report — penalty for failure to file.

Compiler's Comments

1997 Amendment: Chapter 531 inserted (2)(b) allowing imposition of a fine for late filing; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

33-4-315. Examination by commissioner — expense.

Compiler's Comments

1987 Amendment: Substituted present (2), requiring payment of costs as provided in 33-1-413, for former (2) that read: "(2) The charges to be paid by the insurer to the commissioner and his examiners for investigation and examinations provided for in subsection (1) above shall not exceed $100 in any one calendar year unless otherwise expressly authorized by the insurer."

33-4-316. Records — inspections.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-4-320. Managing general agent waiver — exceptions.

Compiler's Comments

Effective Date: This section is effective October 1, 2013.

Part 4
Finance

33-4-401. Surplus funds required.

Compiler's Comments

2001 Amendment: Chapter 228 near beginning of (1) after "state mutual insurer" inserted "or a county mutual insurer that has changed its status to that of a state mutual insurer pursuant to the provisions of 33-4-204" and at end substituted "$200,000" for "$100,000"; in (2) at end substituted "$50,000" for "$20,000"; deleted former (3) that read: "(3) if to insure growing crops against hail or other hazards, surplus in the amount of 150% of the amount otherwise required under this section. This provision (3) shall not apply as to any domestic insurer first authorized as such prior to January 1, 1956, which transacts business on the pro rata, nonassessable plan, under which plan a pro rata portion only of insured losses is paid in event advance premiums collected are inadequate to pay all such losses in full"; and made minor changes in style. Amendment effective April 12, 2001.

33-4-402. Members' liability — limitation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-4-403. Investments.

Compiler's Comments

1993 Amendment: Chapter 334 in (1)(c) substituted "approved by the commissioner" for "recommended by the commissioner and approved by the department of commerce"; inserted (1)(f) allowing investment in corporate bonds; inserted (1)(g) allowing investment in money market funds; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 334, L. 1993, provided: "This bill requires a statement of intent because 33-4-303(1)(g) [33-4-403(1)(g)] directs the commissioner of insurance to define money market fund by administrative rule. In defining the term, the commissioner should take into consideration liquidity, duration, security, and rate of return."

1983 Amendment: Inserted (1)(e) authorizing investment in common stock of a domestic insurer formed as an affiliate company to two or more farm mutual insurers.

1981 Amendment — Commissioner Correction: In (1)(c), section 145, Ch. 575, L. 1981, changed "state examiner" to "department of community affairs". The department of community affairs was abolished by Ch. 274, L. 1981, and the approving function in (1)(c) was not specifically transferred. However, subsection (5), sec. 6, Ch. 274, L. 1981, provided: "The governor may by executive order assign to a department in a manner consistent with this act functions allocated to the department of community affairs by the 47th legislature and not transferred by this act." By

Executive Order No. 16-81 the governor transferred the approving function from the department of community affairs to the department of commerce, and the code commissioner has corrected the reference accordingly.

Administrative Rules

ARM 6.6.4002 Definition of money market funds.

33-4-407. Profits or dividends.

Compiler's Comments

2001 Amendment: Chapter 227 near middle of second sentence after "this chapter" deleted "or a safety fund as authorized under 33-4-405"; and made minor changes in style. Amendment effective October 1, 2001.

33-4-411. Arbitration — committee — compensation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
Insurance Operations

33-4-501. Insuring powers in general.

Compiler's Comments

2001 Amendment: Chapter 228 deleted former (1)(b)(i) and (1)(b)(ii) that read: "(i) outside the boundaries of an incorporated city or town; or

(ii) in an incorporated city or town with a population of less than 15,000"; in (1)(c) near middle substituted "not over four families" for "not over two families" and at end after "usual contents" deleted "situated in an incorporated city or town with a population of 15,000 or more, but only if the property is owned by a member of the insurer or by the member's spouse and the member has other insurance of rural property with the insurer"; in (2)(b) at beginning substituted "if contingent liability exists, provided that every policy contains" for "if every policy bears on its face in boldface type"; deleted former (3) through (5) that read: "(3) Except as provided in subsection (1)(d), an insurer may not insure any property not owned by a member or by the member's spouse.

(4) An insurer may not insure any property situated within the limits of an incorporated city or town except as provided in subsections (1)(b)(ii), (1)(c), and (5) and may not insure the property unless it has and maintains the surplus funds as required under 33-4-401.

(5) An insurer may continue to insure property situated within the limits of an incorporated city or town with a population of 15,000 or more if the insured obtained coverage when the incorporated city or town had a population of less than 15,000"; and made minor changes in style. Amendment effective April 12, 2001.

1995 Amendment: Chapter 281 inserted (1)(b)(ii) allowing a farm mutual insurer to insure in certain incorporated cities or towns; in (1)(c), near beginning after "town", inserted "with a population of 15,000 or more, but only"; in (4), after "provided in", inserted references to subsections (1)(b)(ii) and (5); inserted (5) allowing continued insurance coverage when the population exceeds 15,000 if coverage was obtained when the population was less than 15,000; adjusted subsection references; and made minor changes in style.

1993 Amendment: Chapter 334 in (1)(a), at beginning, substituted "rural" for "farm"; inserted (1)(b) relating to residential dwellings, appurtenant structures, and personal property owned by a member of the insurer or a member's spouse; in (1)(c), at beginning after "dwellings", inserted "and related buildings" and at end substituted "rural property with the insurer" for "farm property with the insurer for a substantial amount"; in (4) substituted "subsection (1)(c)" for "subsection (1)(b)"; and made minor changes in style.

1987 Amendment: At beginning of (1) inserted reference to property insurance; inserted (2) referring to liability insurance and requiring statement on liability policies; and made minor changes in phraseology.

Case Notes

"Business Pursuit" — Definition: Montana has not adopted criteria for determining what is a business pursuit for purposes of an insurance policy clause excluding a business pursuit from coverage. The presence of a profit motive (not actual profit) is one characteristic of a business pursuit, and continually or regularly conducted activity may be a business pursuit even though it is not the primary occupation of the insured. In this case, insured's testimony that he had

income and expenses relating to the pursuit and claimed them on his tax returns established a profit motive. Heggen v. Mtn. W. Farm Bureau Mut. Ins. Co., 220 M 398, 715 P2d 1060, 43 St. Rep. 475 (1986).

33-4-502. Limit of risk — retention of liability.

Compiler's Comments

2013 Amendment: Chapter 208 in (3)(b) substituted "retention on a single liability risk may not exceed the greater of 3% of admitted assets or $50,000" for "maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of $200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year"; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 271 in (1) near beginning after "insurer" substituted "may" for "shall"; in (3)(b) near beginning after "insurer" substituted "that meets the criteria established in 33-4-503" for "authorized to do business in this state"; and made minor changes in style. Amendment effective July 1, 2009.

1997 Amendment: Chapter 158 in (3)(c), near beginning after "liability risk", inserted "risk resulting from insuring growing crops against loss or damage from hail or other hazards"; and made minor changes in style.

1987 Amendment: At beginning of (1) inserted exception clause; inserted (3) setting limits on liability risks; and made minor change in phraseology.

1981 Amendment: Increased maximum amount of single risk insurance from $35,000 to $50,000 in (1).

33-4-503. Reinsurance.

Compiler's Comments

2009 Amendment: Chapter 271 near end after "requirements of" substituted "33-2-1216" for "33-2-1216(3)". Amendment effective July 1, 2009.

2005 Amendment: Chapter 469 near middle after "insurers" inserted "and reinsurers meeting the requirements of 33-2-1216(3)". Amendment effective October 1, 2005.

33-4-504. Cash premium or assessment plans.

Compiler's Comments

2009 Amendment: Chapter 271 in (2) near beginning after "member" deleted "before or at the time of effectuation of the member's insurance"; and made minor changes in style. Amendment effective July 1, 2009.

33-4-505. Certificate of authority required — issuance — continuation — fee.

Compiler's Comments

1999 Amendment: Chapter 316 in (6) near end of first sentence after "insurer of" deleted "the fee for reinstatement as provided in 33-2-708 in addition to"; and made minor changes in style. Amendment effective January 1, 2000.

1987 Amendment: In (3), after "authority", substituted remainder of subsection (see 1987 Session Law for text) for former language that read: "shall expire at midnight on the April 30 next following its date of issuance unless theretofore revoked for cause or otherwise terminated. Unless he finds that the insurer is not qualified therefor under this chapter, the commissioner shall issue to the insurer a renewal certificate of authority on or before May 1 of each year. The commissioner shall not issue any such renewal certificate of authority to any insurer which has not filed its annual statement and report of expenditures as required under 33-4-313"; substituted (4), referring to expiration of certificate of authority and notification of impending expiration, for former language that read: "For each issuance and each renewal of its certificate of authority, the insurer shall pay to the commissioner a fee of $5 if a county mutual insurer or $20 if a state mutual insurer, to be deposited by the commissioner with the state treasurer to the credit of the general fund of this state"; inserted (6) referring to reinstatement of expired certificate of authority; inserted (7) referring to amendment of certificate of authority; and made minor changes in phraseology.

33-4-506. Members — minimum membership.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-4-507. Withdrawal of member — cancellation by insurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-4-508. Application for insurance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-4-509. Application and policy forms filed with commissioner.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 157, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-4-510. Rates — filing — discrimination.

Compiler's Comments

1981 Amendment: Added (2) referring to nonrenewal for nonpayment of dues.

33-4-511. Insurance of schools, community houses, and churches.

Compiler's Comments

1997 Amendment: Chapter 42 in (2) substituted "33-4-501(1)(d)" for "33-4-501(1)(c)"; and made minor changes in style. Amendment effective March 12, 1997.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-4-521. Farm mutual insurers — merger.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

33-4-522. Bulk reinsurance — farm mutual insurers.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

CHAPTER 5
RECIPROCAL INSURERS

Chapter Case Notes

Reciprocal Interinsurance Agreement Insufficient Basis for Exercise of Long-Arm Jurisdiction: A default judgment was obtained in Colorado against defendants, Montana residents, in a case which arose from defendants' participation in a reciprocal interinsurance agreement. Some of the subscribers to the agreement were Colorado residents. The Supreme Court upheld the District Court's refusal to enforce the judgment in Montana, ruling that enforcement of the judgment would be a violation of the federal due process clause because the defendants had not had sufficient "minimum contacts" with the state of Colorado to warrant the exercise of personal jurisdiction over the defendants. The court stated that the provision of the Colorado long-arm statute that covered causes of action arising from "contracting to insure any person, property or risk residing or located within this state at the time of contracting" was not applicable because this was not the sort of "company" that was contemplated when the long-arm statutes were drafted. The court further stated that the defendants did not know the name of the insurance company which issued the policy and had not purposely availed themselves of the privilege of conducting activities within the state of Colorado. Benham v. Woltermann, 201 M 149, 653 P2d 135, 39 St. Rep. 2017 (1982).

Part 2
Formation

33-5-201. Organization of reciprocal insurer.

Compiler's Comments

2003 Amendment: Chapter 500 inserted (1)(b) authorizing 8 or more employers with a total of more than 500 employees to organize a domestic reciprocal insurer; in (2) after "shall" deleted "fulfill the requirements of and shall execute and"; in (2)(c) after "transacted" inserted remainder of subsection restricting insurer to workers' compensation coverage for employees; and made minor changes in style. Amendment effective October 1, 2003.

33-5-202. Merger or conversion.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Management

33-5-303. Attorney's bond.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 4
Finance

33-5-401. Surplus funds required.

Compiler's Comments

2001 Amendment: Chapter 227 at end of (1)(a) substituted "$500,000" for "$400,000"; at end of (1)(b)(i) substituted "$750,000" for "$600,000"; and at end of (1)(b)(ii) substituted "$500,000" for "$400,000". Amendment effective October 1, 2001.

1995 Amendment: Chapter 379 in (1) substituted "subject to this part" for "hereunder formed"; in (1)(b), after "insurance", deleted "other than workers' compensation, surplus funds of not less than $400,000"; inserted (1)(b)(i) and (1)(b)(ii) concerning authority for workers' compensation insurance; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-5-402. Contributions to insurer.

Compiler's Comments

1999 Amendment: Chapter 472 near middle of third sentence before "realized" substituted "insurer's" for "insured's". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 531 in third sentence, after "insurer", substituted "during any calendar year, the total of withdrawals and repayments of the advanced sums may not exceed the lesser of the insured's realized earned surplus or 10% of the sums advanced as of the previous December 31" for "shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

33-5-403. Financial condition — method of determining.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-5-404. Subscribers' liability.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-5-405. Subscribers' liability on judgment.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-5-406. Assessments.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-5-407. Time limit for assessments.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-5-409. Nonassessable policies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-5-412. Impaired reciprocals.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 6
BENEVOLENT ASSOCIATIONS

Part 1
General Provisions

33-6-102. Definition.

Compiler's Comments

2019 Amendment: Chapter 26 deleted former definitions that read: ""Member" or "member in good standing" is an individual who must contribute to a benevolent association upon notice of assessment", "(a) "Membership contract" is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement of a benevolent association with any or all of its members under which any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by the association upon the death of a member to the member's legal representatives or to the beneficiary or beneficiaries designated by the member.

(b) There must be one contributing member for each membership contract, but a membership contract may cover more than one individual", and ""Officer" is any of the individuals having supervision and control of a benevolent association and engaging in the management and the prosecution of the business of the association, whether designated as officers, trustees, comptrollers, managers, or by whatever name called"; and made minor changes in style. Amendment effective February 28, 2019.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-6-103. New benevolent associations prohibited — foreign associations.

Compiler's Comments

2019 Amendment: Chapter 26 in (2) after "this state" inserted "on or after January 1, 1961"; and made minor changes in style. Amendment effective February 28, 2019.

CHAPTER 7
FRATERNAL BENEFIT SOCIETIES

Part 1
General Provisions

33-7-105. Fraternal benefit societies.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Case Notes

Change of Insurance Plan by Fraternal Organization in Convention: Where fraternal mutual insurance society at convention changed from assessment to reserve plan and beneficiaries of member who refused to join the reserve division or comply with the requirement calling for multiple assessments asserted that the action of the convention was invalid because delegates didn't conform to certain requirements and hence their decedent was not in arrears and improperly suspended, the assertion was not well made. Willson v. Woodmen of the World, 104 M 31, 64 P2d 1064 (1937).

33-7-106. Lodge system.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-107. Representative form of government.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-108. Definitions.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-109. Purposes and powers.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-110. Qualification for membership.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-117. Scope — provisions applicable.

Compiler's Comments

2015 Amendment: Chapter 63 in (2) after "chapter 2" substituted "parts 13 and 19" for "part 13". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

1995 Amendment: Chapter 379 in (2), after "33-3-308", inserted "33-3-701 through 33-3-704"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-118. Reports — fee.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-119. Examination of societies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-120. Injunction — liquidation — receivership of domestic society.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-121. Suspension, revocation, or refusal of license of foreign or alien society.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-122. Injunction.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-124. Review.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-125. Penalties.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-126. Exemption of certain societies.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-127. Service of process.

Compiler's Comments

Effective Date: Section 57, Ch. 157, L. 2023, provided that this section is effective on passage and approval. Approved April 19, 2023.

Part 2
Formation

33-7-208. Organization.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-209. Amendments to laws.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Case Notes

Refusal Upon Change of Plan to Pay Multiple Assessments: Where fraternal mutual insurance society at convention changed from assessment to reserve plan but gave members an option to remain in assessment plan subject to multiple assessments, member who refused to join the reserve division or pay the multiple assessments was in arrears and properly suspended. Willson v. Woodmen of the World, 104 M 31, 64 P2d 1064 (1937).

33-7-210. Institutions.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-214. Reinsurance.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-215. Consolidations and mergers.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-216. Conversion of society into mutual life insurance company.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-217. Annual certificate — fees.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Part 3
Management

33-7-306. Location of office — meetings — communication to members — grievance procedures.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-307. No personal liability.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-308. Waiver.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Part 4
Finance

Part Case Notes

Transfer of Surplus to Reserve: Contention that fraternal mutual benefit society had no right to transfer a part of its surplus accumulated under the assessment plan to a newly created reserve division, held not meritorious, inasmuch as a member does not acquire a severable or proprietary right to any portion of the property as against the society unless it be in liquidation. Willson v. Woodmen of the World, 104 M 31, 64 P2d 1064 (1937).

33-7-408. Investments.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-409. Funds.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-410. Taxation.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-411. Valuation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Part 5
Insurance Operations

33-7-520. Benefits.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-521. Beneficiaries.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Case Notes

Actual or Claimed Relationship — Change of Status: When a woman claimant under a fraternal benefit certificate had been falsely or fraudulently designated as beneficiary as the cousin of the insured but years later became his common-law wife, she, though admittedly incapable of taking as deceased's cousin, as wife occupied a degree of relationship under section 6311, R.C.M. 1935 (since repealed), entitling her to take as such. Stevens v. Woodmen of the World, 105 M 121, 71 P2d 898 (1937).

Who May Contest Eligibility of Beneficiary: When the eligibility of beneficiaries is controlled solely by the constitution or bylaws of the society rather than by a statute of the state, no one other than the society may question the eligibility of the beneficiary. Styles v. Byrne, 89 M 243, 296 P 577 (1930).

Ineligible Beneficiary — Insurance Not Invalidated: When the constitution of a society and the bylaws of a subordinate lodge provided that where husband or wife is designated as beneficiary, divorce should render either ineligible as beneficiary and annul the designation, the husband's designation as beneficiary lapses upon the happening of the divorce, but the insurance is not thereby invalidated as to others who may be eligible to receive payment. Nitsche v. Sec. Benefit Ass'n, 78 M 532, 255 P 1052 (1927).

33-7-522. Benefits not attachable.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-523. Benefit contract.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Case Notes

Failure to Pay Assessments: Member of fraternal society was chargeable with knowledge that failure on his part to pay multiple assessments would result in suspension, under the facts presented. Willson v. Woodmen of the World, 104 M 31, 64 P2d 1064 (1937).

Modification of Contract: The certificate of life insurance issued by a mutual benefit association working under a lodge system, with the original application, the report of the medical examiner, and the constitution and bylaws of the society, constitutes the contract between it and its member, which contract can be modified only by a subsequent agreement in writing or by executed oral agreement between the original parties thereto. Nitsche v. Sec. Benefit Ass'n, 78 M 532, 255 P 1052 (1927).

Elements of Contract: In an action on a certificate of life insurance issued by a fraternal insurance society, the certificate together with the application and the provisions of the constitution and bylaws of the society applicable constitutes the contract between the parties. Osborne v. Supreme Lodge Ins. Dept., 69 M 361, 222 P 456 (1924).

Recovery of Premiums on Forfeited Policy: In an action to recover back life insurance premiums alleged to have been paid without consideration and under the mistaken idea that the policy was still in force, whereas it had been forfeited for noncompliance with its conditions, the test whether plaintiff could prevail was whether his beneficiary could have collected the amount thereof had the insured died in the meantime. Osborne v. Supreme Lodge Ins. Dept., 69 M 361, 222 P 456 (1924).

33-7-524. Nonforfeiture benefits, cash surrender values, certificate loans, and other options.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-525. Insurance producer defined — fraternal benefit society insurance contracts.

Compiler's Comments

2003 Amendment: Chapter 427 in (1) near middle after "negotiation, or" substituted "sale" for "procurement or making"; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1981 Amendment: Deleted former subsection (2) relating to the exclusion of a person devoting less than 50% of his time soliciting contracts from the definition of "insurance agent"; made minor changes in phraseology.

Source: Section 28(1) of A Uniform Fraternal Code, promulgated by the National Association of Insurance Commissioners.

33-7-531. Foreign or alien society — admission.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 157, L. 2023. Amendment effective April 19, 2023.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Case Notes

Foreign Decision Approving Rate Hike — Binding on Other States' Citizens: The decision of the Supreme Court of the domicile of a fraternal benefit association that the association had a right under its constitution and bylaws to increase its rates and provide for multiple assessments is binding upon citizens of other states who are members of the association. Willson v. Woodmen of the World, 104 M 31, 64 P2d 1064 (1937).

33-7-532. Insurance producer licensing — fraternal benefit society.

Compiler's Comments

2003 Amendment: Chapter 427 in (1) at end after "chapter 17" deleted "except that an examination is not required of an individual who is licensed in this state as an insurance producer for a society as to the kind of insurance to be transacted on or before October 1, 1981, and who continues to be licensed as an insurance producer"; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

33-7-533. Unfair methods of competition and unfair or deceptive acts and practices.

Compiler's Comments

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

Effective Date: Section 44, Ch. 586, L. 1991, provided: "[This act] is effective January 1, 1992."

Administrative Rules

ARM 6.6.2104 Jurisdiction and applicability date.
ARM 6.6.2106 Unfair discrimination on the basis of blindness.

CHAPTER 9
PROFESSIONAL LIABILITY INSURANCE

Part 1
General Provisions

33-9-101. Definitions.

Compiler's Comments

Not Codified: Section 40-4759(1), R.C.M. 1947, defining "commissioner", was not codified in the MCA because it is redundant with same definition at 33-1-202. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 119, L. 1977. See 1-2-208, stating that amendment to codified provision is given effect over uncodified provision.

33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 10
INSURANCE GUARANTY ASSOCIATIONS

Part 1
Casualty and Property Insurance Guaranty Associations

Part Compiler's Comments

Terminology Change: Section 140, Ch. 575, L. 1981, provided: "In Title 33, chapter 10, parts 1 and 2, "conservation" means "supervision". The code commissioner is authorized and instructed to change all references to "conservation" in Title 33, chapter 10, parts 1 and 2, to "supervision"."

Source: This part is derived from the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners. All states except Arkansas, California, Georgia, Michigan, South Dakota, Texas, and Wisconsin have enacted this Model Act.

33-10-101. Short title, purpose, scope, and construction.

Commission Notes

This bill focuses on property and liability kinds of insurance and therefore exempts those kinds of insurance deemed to present problems quite distinct from those of property and liability insurance.

"Credit insurance" as used here is intended to mean insurance on accounts receivable.

It is intended that the terms "disability insurance" and "accident and health insurance," and "health insurance" be synonymous. Each state will wish to examine its own statutes to determine which is the appropriate phrase.

Compiler's Comments

1987 Amendment: In (3), after "mortgage", deleted ",".

Source: Sections 1 through 4 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

Case Notes

Subrogation Recoveries From MIGA Prohibited: The District Court granted summary judgment against an insurer and in favor of the Montana Insurance Guarantee Association (MIGA), Montana Potato Improvement Association (MPIA), and State of Montana. The Supreme Court held that the summary judgment was proper with respect to MIGA because the statute prohibits subrogation recoveries against MIGA, but the statute does not prohibit subrogation claims against MPIA or the state. Howell v. Glacier Gen. Assurance Co., 240 M 383, 785 P2d 1018, 46 St. Rep. 2216 (1989).

Insolvent Insurer — Applicability: Plaintiff settled with tortfeasor's insurance company for injuries sustained in an auto accident, but the company became insolvent before making payment. Plaintiff's own company was not liable under its "uninsured automobile" clause because there was no affirmative act by the insolvent insurer whereby it "denied coverage". Application of the Montana Insurance Guaranty Association Act protects plaintiff as effectively as a strained judicial construction of the uninsured motorist policy terms. Murray v. Mont. Ins. Guar. Ass'n, 175 M 220, 573 P2d 196 (1977).

33-10-102. Definitions.

Commission Notes

["Covered Claim":] The subcommittee feels that the claims covered by the Association should include all claims, including unearned premiums, arising from the policies of the insolvent insurer. A state may wish to exclude unearned premiums, in which case "excluding" should be substituted for "including" in the first line. However, recovery from this state's Association should be limited to persons having sufficient contacts with the state. The subcommittee does not feel that coverage should be extended to elements of the insurance industry which know or reasonably can be expected to know the financial condition of various companies.

The meaning of the term "residence" should be determined by the law of each state. This is especially true in relation to corporations, for the subcommittee feels the "residence" of a corporation should not necessarily be equated with its domicile.

["Member Insurer":] A state may wish to exempt from the Act certain kinds of companies, such as farmer, county, township or assessment mutuals, fraternals or nonprofit service plans.

["Person":] In some states it may be necessary to add reciprocals and insurance exchanges to this definition. Each state will wish to examine its own statutes to determine whether this definition and the others listed above should be deleted and to determine whether additional definitions are necessary.

Compiler's Comments

2003 Amendment: Chapter 380 in definition of insolvent insurer in (b) substituted reference to order of liquidation and finding of insolvency entered by court in insurer's state of domicile for "determined to be insolvent by a court of competent jurisdiction". Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 in definition of covered claim in (b)(iii) at beginning of second sentence deleted "If insolvent", near middle after "amount against" substituted "the insured of the insolvent insurer other than" for "an insured except", and at end substituted "insolvent insurer's policy" for "insured's policy"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 in definition of covered claim in (b) substituted (i) through (iii) providing that certain amounts are not included in a covered claim for former text that read: "due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise"; in definition of net direct written premiums in (a) at end after "policyholders" substituted "of policies to which this part applies" for "on such direct business"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Not Codified: Section 40-5705(2), R.C.M. 1947, defining "commissioner", was not codified in the MCA as being redundant with the same definition at 33-1-202. This clause has not been repealed and is still valid law. Citation may be made to sec. 5, Ch. 63, L. 1971. See 1-2-208, stating that amendment to codified provision is given effect over uncodified provision.

Source: Section 5 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

Case Notes

Applicability of Guaranty Association's Liability Limit to Each Claimant in Underlying Occurrence: The state paid a $360,000 settlement on a judgment. There were 10 plaintiffs in the case leading to the judgment. The Montana Insurance Guaranty Association's $300,000 obligation limit under this chapter applied to the total judgment received by the 10 plaintiffs combined, not separately to each plaintiff's recovery. Therefore, the Association was liable to the state for only $300,000. Howell v. St., 263 M 275, 868 P2d 568, 51 St. Rep. 53 (1994).

Guaranty Association's Liability for Attorney Fees in Successful Action Against Association: The state settled and paid a judgment against the state after the state's insurer could not pay because the insurer was insolvent. The state then won a judgment against the Montana Insurance Guaranty Association for repayment by the Association to the state of the first $300,000 paid under the settlement. The insurance contract between the state and the insolvent insurer, an agreement between the state (another defendant in the underlying case) and the Association on the defense and indemnity of the claim in the underlying case, and this chapter do not specifically authorize an award against the Association of attorney fees to the state in the state's successful indemnification action against the Association. The state's argument that the state was entitled to the fees because the Association breached the defense agreement by withdrawing from the defense of the underlying action was rejected. Section 33-10-110 immunizes the Association from payment of the fees. It precludes Association liability for any claims other than "covered claims" as defined by this chapter, and that definition does not include attorney fees. Howell v. St., 263 M 275, 868 P2d 568, 51 St. Rep. 53 (1994), followed in Boettcher v. Mont. Guar. Fund, 2007 MT 69, 336 M 393, 154 P3d 629 (2007).

Guaranty Association's Liability to Insured Who Paid Underlying Claim After Insurer Became Insolvent: The state sought indemnification from the Montana Insurance Guaranty Association for $360,000 of settlement money that the state paid on a judgment against the state. The state's insurer should have paid the settlement under a policy but could not pay because the insurer was insolvent. The Association claimed it was not liable because this chapter's definition of a "covered claim" refers to an "unpaid claim" and the state had already paid the claim by paying the judgment. The Association's position, including reference to the claim as the claim of the original plaintiff against the state in the underlying action that led to the $360,000 settlement, is misplaced. The claim before the court is the state's indemnification claim against the Association, which is unpaid. The Association was liable to the state up to the $300,000 limit contained in this chapter. Further, the Association's argument that the state's claim is essentially an insurance subrogation claim is incorrect. Howell v. St., 263 M 275, 868 P2d 568, 51 St. Rep. 53 (1994).

33-10-103. Creation of the association.

Commission Notes

Although the Association is created here as a "nonprofit unincorporated legal entity," each state will wish to examine its law to determine whether some alteration in this terminology is desirable.

Compiler's Comments

Source: Section 6 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-104. Board of directors — commissioner approval — compensation.

Commission Notes

The number of members on the board of directors may be left open to some extent, as it is here, or it may be specified. The same holds true for the terms of office. A state may also wish to provide that a majority of the members of the board represent domestic insurers.

Compiler's Comments

2013 Amendment: Chapter 169 in (1) in third sentence before "selected" inserted "member insurers and must be". Amendment effective April 9, 2013.

1995 Amendment: Chapter 65 in (1), in first sentence, increased number on board of directors from five to seven and inserted second sentence requiring that two board members be appointed from the public at large; and made minor changes in style.

Not Codified: Section 40-5707(1)(part), R.C.M. 1947, establishing the procedure for the initial selection of directors and organizational meeting, was not codified in the MCA as being temporary. This clause has not been repealed and is still valid law. Citation may be made to sec. 7, Ch. 63, L. 1971.

Source: Section 7 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-105. General powers and duties.

Commission Notes

The obligation of the Association is limited to covered claims unpaid prior to insolvency, and to claims arising within 30 days after the insolvency, or until the policy is cancelled or replaced by the insured, or it expires, whichever is earlier. The basic principle is to permit policyholders to make an orderly transition to other companies. There appears to be no reason why the Association should become in effect an insurer in competition with member insurers by continuing existing policies, possibly for several years. It is also felt that the control of the policies is properly in the hands of the liquidator. Finally, one of the major objections of the public to rapid termination—loss of unearned premiums with no corresponding coverage—is ameliorated by this bill since unearned premiums are permissible claims against the Association.

The deductible amount ($100) and the maximum ($300,000) represent the subcommittee's concept of practical limitations.

The liquidation statutes of the state may describe the persons to be notified by the liquidator, but since this Association provides a distinctive service, the commissioner may wish to require a separate notification by it.

The subcommittee feels that the board of directors should determine the amount of the refunds to members when the assets of the Association exceed its liabilities. However, since this excess may be quite small, the board is given the option of retaining all or part of it to pay expenses and possibly remove the need for a relatively small assessment at a later time.

Compiler's Comments

2015 Amendment: Chapter 63 in (1)(a)(ii)(B) inserted "or excess workers' compensation". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2005 Amendments — Composite Section: Chapter 29 in (1)(a)(ii) near middle substituted "that does not exceed $300,000" for "that is in excess of $100 and is less than $300,000"; and made minor changes in style. Amendment effective March 18, 2005.

Chapter 195 in (1) at beginning inserted "Subject to subsection (2)"; in (1)(d) at end after "33-10-109(2)(a)" inserted "including the department of labor and industry for workers' compensation claims"; inserted (2) disallowing a claim filed with an association or liquidator as a covered claim, with some exceptions, and establishing notice requirements; and made minor changes in style. Amendment effective October 1, 2005.

Applicability: Section 2, Ch. 195, L. 2005, provided: "[This act] applies to all liquidations commenced on or after [the effective date of this act]." Effective October 1, 2005.

Directions to Code Commissioner: Pursuant to sec. 41, Ch. 416, L. 2005, the code commissioner in (2)(b)(i) in two places substituted reference to chapter 71 for reference to chapter 72; and in (2)(b)(ii) substituted "a workers' compensation claim or an occupational disease claim pursuant to Title 39, chapter 71" for "a workers' compensation claim pursuant to Title 39, chapter 71, or an occupational disease claim pursuant to Title 39, chapter 72".

1993 Amendment: Chapter 596 in (1)(a)(ii)(A), after "pay", inserted "an amount not exceeding $10,000 per policy for a covered claim for the return of unearned premium"; and made minor changes in style.

Source: Section 8, except (1)(c), of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

Case Notes

Applicability of Guaranty Association's Liability Limit to Each Claimant in Underlying Occurrence: The state paid a $360,000 settlement on a judgment. There were 10 plaintiffs in the case leading to the judgment. The Montana Insurance Guaranty Association's $300,000 obligation limit under this chapter applied to the total judgment received by the 10 plaintiffs combined, not separately to each plaintiff's recovery. Therefore, the Association was liable to the state for only $300,000. Howell v. St., 263 M 275, 868 P2d 568, 51 St. Rep. 53 (1994).

Guaranty Association's Liability for Attorney Fees in Successful Action Against Association: The state settled and paid a judgment against the state after the state's insurer could not pay because the insurer was insolvent. The state then won a judgment against the Montana Insurance Guaranty Association for repayment by the Association to the state of the first $300,000 paid under the settlement. The insurance contract between the state and the insolvent insurer, an agreement between the state (another defendant in the underlying case) and the Association on the defense and indemnity of the claim in the underlying case, and this chapter do not specifically authorize an award against the Association of attorney fees to the state in the state's successful indemnification action against the Association. The state's argument that the state was entitled to the fees because the Association breached the defense agreement by withdrawing from the defense of the underlying action was rejected. Section 33-10-110 immunizes the Association from payment of the fees. It precludes Association liability for any claims other than "covered claims" as defined by this chapter, and that definition does not include attorney fees. Howell v. St., 263 M 275, 868 P2d 568, 51 St. Rep. 53 (1994), followed in Boettcher v. Mont. Guar. Fund, 2007 MT 69, 336 M 393, 154 P3d 629 (2007).

Guaranty Association's Liability to Insured Who Paid Underlying Claim After Insurer Became Insolvent: The state sought indemnification from the Montana Insurance Guaranty Association for $360,000 of settlement money that the state paid on a judgment against the state. The state's insurer should have paid the settlement under a policy but could not pay because the insurer was insolvent. The Association claimed it was not liable because this chapter's definition of a "covered claim" refers to an "unpaid claim" and the state had already paid the claim by paying the judgment. The Association's position, including reference to the claim as the claim of the original plaintiff against the state in the underlying action that led to the $360,000 settlement, is misplaced. The claim before the court is the state's indemnification claim against the Association, which is unpaid. The Association was liable to the state up to the $300,000 limit contained in this chapter. Further, the Association's argument that the state's claim is essentially an insurance subrogation claim is incorrect. Howell v. St., 263 M 275, 868 P2d 568, 51 St. Rep. 53 (1994).

Payments From Other Sources Offset Against $300,000 Limit of MIGA's Obligation: The plaintiff had been injured in a motorcycle accident, with his damages stipulated to exceed $1 million. The helmet manufacturer, an Idaho corporation, was insolvent, and the plaintiff received the $300,000 maximum from Idaho's insurance guaranty fund. The Supreme Court reversed the lower court and held that the money received from Idaho's fund had to be offset against the $300,000 limit for Montana's fund, and therefore the plaintiff was entitled to no additional compensation. Palmer v. Mont. Ins. Guar. Ass'n, 239 M 78, 779 P2d 61, 46 St. Rep. 1526 (1989).

33-10-106. Plan of operation — delegation to other organization.

Commission Notes

The subcommittee recognizes current discussion at both the regulatory and industry levels concerning the possible creation of a nonfederal interstate organization to perform various functions relating to the protection of policyholders and claimants from insurer insolvency. It is difficult at present to predict the type of interstate arrangement which may evolve. At the same time, the subcommittee would like to avoid the necessity of returning to each state legislature if a desirable, nonfederal interstate approach is developed. Consequently, this subsection, with appropriate standards and regulatory safeguard, provides a highly flexible transition device. The subsection operates on the theory of a revocable delegation of functions in the plan of operations if approved by the industry and the commissioner. The board of directors would continue in existence in each state which would, among other things, provide the commissioner with a contact for his regulatory control. In addition, membership would continue to be mandatory state by state as recognized under this bill and no new legislation would be necessary. This approach would permit the gradual development (e.g. a partial delegation of powers) of an interstate system as opposed to an all or nothing choice. Finally, it should be noted that the Association may not delegate its powers to assess or borrow money. Assessments would continue to be made on a state by state basis in accordance with the provisions of the individual state statutes.

Compiler's Comments

2007 Amendment: Chapter 44 in (4) near beginning of first sentence after "under" substituted "33-10-105(3)(b)" for "33-10-105(2)(b)"; and made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Not Codified: Section 40-5709(1)(b)(part), R.C.M. 1947, requiring that the association submit a plan of operation within 90 days of the effective date of the passage of this act, was not codified because it was temporary. This clause has not been repealed and is still valid law. Citation may be made to sec. 9, Ch. 63, L. 1971.

Source: Section 9, except (3)(d), of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-107. Tax exemption.

Compiler's Comments

Source: Section 15 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-108. Prevention of insolvencies — directors' and commissioner's action.

Commission Notes

The board of directors could be expected to request an examination when they have information suggesting the presence of activities which could lead to rehabilitation under the Wisconsin Rehabilitation and Liquidation Act which has been endorsed by the NAIC. These activities are outlined in Section 645.31 of the Wisconsin Statutes.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted "supervision" for "conservation" in (4).

Source: Section 13 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 10 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-110. Immunity.

Compiler's Comments

2005 Amendment: Chapter 29 near middle after "insurer" inserted "or its agents or employees" and after "association or" substituted "the association's agents" for "its insurance producers"; and made minor changes in style. Amendment effective March 18, 2005.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 17 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

Case Notes

Montana Guaranty Fund Not Considered State Agency, So State Not Party to Action — Contemporaneous Filing of Notice of Constitutional Challenge With Notice of Appeal Required:

Plaintiffs filed a notice of a constitutional challenge to this section with the Supreme Court. Defendants filed a notice claiming that the challenge was untimely. The Supreme Court agreed with defendants, holding that pursuant to former Rule 38, M.R.App.P. (now superseded), if the state is not a party to the action, the court is precluded from considering a constitutional issue if notice of a constitutional challenge is not filed contemporaneously with a notice of appeal. The Montana Insurance Guaranty Association (MIGA), also known as the Montana Guaranty Fund, is not a public agency but rather, by definition, is a nonprofit, unincorporated legal entity funded entirely by an assessment on its members and not by the state. Because MIGA was not a state agency for purposes of former Rule 38, M.R.App.P. (now superseded), plaintiffs were required to file a notice of constitutional challenge contemporaneously with a notice of appeal, and failure to do so rendered plaintiffs' constitutional challenge untimely. Boettcher v. Mont. Guar. Fund, 2006 MT 127, 332 M 279, 140 P3d 474 (2006), following Haider v. Frances Mahon Deaconess Hosp., 2000 MT 32, 298 M 203, 994 P2d 1121 (2000), and Weinert v. Great Falls, 2004 MT 168, 322 M 38, 97 P3d 1079 (2004), and distinguishing State ex rel. Morales v. City Comm'n, 174 M 237, 570 P2d 887 (1977).

Guaranty Association's Liability for Attorney Fees in Successful Action Against Association: The state settled and paid a judgment against the state after the state's insurer could not pay because the insurer was insolvent. The state then won a judgment against the Montana Insurance Guaranty Association for repayment by the Association to the state of the first $300,000 paid under the settlement. The insurance contract between the state and the insolvent insurer, an agreement between the state (another defendant in the underlying case) and the Association on the defense and indemnity of the claim in the underlying case, and this chapter do not specifically authorize an award against the Association of attorney fees to the state in the state's successful indemnification action against the Association. The state's argument that the state was entitled to the fees because the Association breached the defense agreement by withdrawing from the defense of the underlying action was rejected. This section immunizes the Association from payment of the fees. It precludes Association liability for any claims other than "covered claims" as defined by this chapter, and that definition does not include attorney fees. Howell v. St., 263 M 275, 868 P2d 568, 51 St. Rep. 53 (1994), followed in Boettcher v. Mont. Guar. Fund, 2007 MT 69, 336 M 393, 154 P3d 629 (2007).

33-10-111. Stay of proceedings — reopening of default judgments.

Compiler's Comments

1993 Amendment: Chapter 596 in (1) increased length of stay of proceedings from 60 days to 6 months and near middle, after "insolvency is determined", inserted "or an ancillary proceeding is instituted in the state, whichever is later, or must be stayed for any additional time as may be determined by the court in order"; and made minor changes in style.

Source: Section 18 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-112. Examination of association.

Compiler's Comments

Source: Section 14 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-113. Claims — notice.

Commission Notes

On the general subject of the relationship of the association to the liquidator, the subcommittee takes the position that since this is a model state bill, it will be able to bind only two parties—the association and the in-state liquidator. Nevertheless, the provisions should be clear enough to outline the requests being made to out-of-state liquidators and the requirements placed on in-state liquidators in relation to out-of-state associations.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 9(3)(d) of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

33-10-114. Claims — effect as to insured and receiver.

Commission Notes

The priority of claims against the assets of the insolvent insurer may be determined by the liquidation statutes. States which do not set such priorities by statute may wish to revise the language in [subsection (2)]. It seems probable that the courts would treat claims by the Association on the basis of the underlying claim, as this subsection requires even in the absence of this provision.

Compiler's Comments

1993 Amendment: Chapter 596 inserted (2) regarding the association's right of recovery of the amount of a covered claim; and made minor changes in style.

Source: Section 11 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

Case Notes

Employer's Insurer Insolvent After Workers' Compensation Claim Adjusted — Employer Not "Uninsured Employer": The plaintiff's employee filed a workers' compensation claim that was accepted and adjusted by the plaintiff's insurer. The insurer was later declared insolvent, and the defendant agency assumed handling of the claim. Later, however, the defendant notified the plaintiff that it was seeking the recovery of the benefits paid to the employee, and the plaintiff filed a declaratory action. The District Court granted the plaintiff summary judgment, concluding that the Workers' Compensation Act provides an exclusive remedy that frees an employer from potential liability claims by an employee. On appeal, the Supreme Court affirmed, holding that the insurer's insolvency did not render the plaintiff an "uninsured employer". Asurion Serv., LLC v. Mont. Ins. Guar. Ass'n, 2017 MT 140, 387 Mont. 483, 396 P.3d 140.

33-10-115. Recovery — sequence — nonduplication.

Commission Notes

[Subsection (2)] does not prohibit recovery from more than one Association, but it does describe the Association to be approached first and then requires that any previous recoveries from like Associations must be set off against recoveries from this Association.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 12 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

Case Notes

Payments From Other Sources Offset Against $300,000 Limit of MIGA's Obligation: The plaintiff had been injured in a motorcycle accident, with his damages stipulated to exceed $1 million. The helmet manufacturer, an Idaho corporation, was insolvent, and the plaintiff received the $300,000 maximum from Idaho's insurance guaranty fund. The Supreme Court reversed the lower court and held that the money received from Idaho's fund had to be offset against the $300,000 limit for Montana's fund, and therefore the plaintiff was entitled to no additional compensation. Palmer v. Mont. Ins. Guar. Ass'n, 239 M 78, 779 P2d 61, 46 St. Rep. 1526 (1989).

33-10-116. Assessment.

Commission Notes

The maximum assessment per year may be varied from state to state depending on the size of the base. The figure used should produce sufficient funds to handle any possible insolvency, keeping in mind that the total amount may not be needed in one year.

The 2% maximum used here would have produced in 1968 on a nationwide basis, from the kinds of insurance to which this Act applies, approximately $500,000,000.

Compiler's Comments

Source: Section 8(c) of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

Case Notes

Montana Guaranty Fund Not Considered State Agency, So State Not Party to Action — Contemporaneous Filing of Notice of Constitutional Challenge With Notice of Appeal Required: Plaintiffs filed a notice of a constitutional challenge to 33-10-110 with the Supreme Court. Defendants filed a notice claiming that the challenge was untimely. The Supreme Court agreed with defendants, holding that pursuant to former Rule 38, M.R.App.P. (now superseded), if the state is not a party to the action, the court is precluded from considering a constitutional issue if notice of a constitutional challenge is not filed contemporaneously with a notice of appeal. The Montana Insurance Guaranty Association (MIGA), also known as the Montana Guaranty Fund, is not a public agency but rather, by definition, is a nonprofit, unincorporated legal entity funded entirely by an assessment on its members and not by the state. Because MIGA was not a state agency for purposes of former Rule 38, M.R.App.P. (now superseded), plaintiffs were required to file a notice of constitutional challenge contemporaneously with a notice of appeal, and failure to do so rendered plaintiffs' constitutional challenge untimely. Boettcher v. Mont. Guar. Fund, 2006 MT 127, 332 M 279, 140 P3d 474 (2006), following Haider v. Frances Mahon Deaconess Hosp., 2000 MT 32, 298 M 203, 994 P2d 1121 (2000), and Weinert v. Great Falls, 2004 MT 168, 322 M 38, 97 P3d 1079 (2004), and distinguishing State ex rel. Morales v. City Comm'n, 174 M 237, 570 P2d 887 (1977).

33-10-117. Recognition of assessments in rates.

Commission Notes

Although generally rates are prospective in nature, this section would permit recoupment of amounts assessed in the past.

Compiler's Comments

Source: Section 16 of the Post-Assessment Property and Liability Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC). The states that have adopted this Model Act are listed at the chapter 10, part 1, compiler's comment.

Part 2

Life and Health Insurance Guaranty Associations

Part Compiler's Comments

Terminology Change: Section 140, Ch. 575, L. 1981, provided: "In Title 33, chapter 10, parts 1 and 2, "conservation" means "supervision". The code commissioner is authorized and instructed to change all references to "conservation" in Title 33, chapter 10, parts 1 and 2, to "supervision"."

Source: This part is derived from the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners, 1971. This Model Act has been enacted in the following states: Arizona, Connecticut, Idaho, Kansas, Maryland, Minnesota, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oregon, South Carolina, Texas, Vermont, Virginia, Washington, and West Virginia.

33-10-201. Short title, purpose, and construction.

Commission Notes

This model act is to be distinguished from the NAIC model guaranty association act for property and liability insurance. Although several philosophical and technical differences exist between this bill and the property and liability model act, to the extent possible and appropriate, provisions and the format of the latter are utilized in this model act.

The basic purpose of this model act is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees against losses (both in terms of paying claims and continuing coverage) which might otherwise occur due to an impairment or insolvency of an insurer. Unlike the property and liability situations, life and annuity contracts in particular are long term arrangements for security. An insured may be in impaired health or at an advanced age so as to be unable to obtain new and equivalent coverage from other insurers. The payment of cash values alone does not adequately meet such needs. Thus it is essential that coverage be continued. In like manner, an insured may be unable to obtain new health insurance or, at least, he may lose protection for prior illness.

This model act does not apply to reinsurance. Furthermore, it applies only to direct insurance "issued by persons licensed to transact insurance in this state at any time." Coverage issued by insurers which have not submitted to the application of a state's regulatory safeguards is excluded from protection by this act. However, states may wish to consider modifying the scope provision to cover certificate holders under group policies validly issued in other states by unlicensed insurers.

The model bill covers life, health, and annuities and contracts supplemental thereto. The term health insurance is intended to include "accidental and health" insurance, "sickness and accident" insurance, "disability" insurance, etc. The individual state may want to adjust this language to fit its particular terminology. "Authorized" has been amended to read "licensed" to make sure that all unauthorized insurers are excluded from this act.

Subsection [(5)(a)] is directed toward variable policies and contracts. That portion of the contract where the risk is borne by the policyholder is excluded. However the obligations of the insurer (e.g. mortality and expense guarantees) are covered. Furthermore, [33-10-224] provides that the Association's liability shall not exceed the contractual obligations of the impaired or insolvent insurer. Subsection [(5)(b)] exempts the reinsurance business of the impaired or insolvent insurer other than reinsurance for which assumption certificates are used.

Subsection (2)(d) [not enacted in Montana] provides a ready means by which an individual state can exempt from the act those policies and contracts issued by insurers or similar organizations deemed appropriate for exemption by such state. Some of those which have been suggested for the exemption are assessment mutuals, fraternals, nonprofit hospital and medical service plans, burial societies, and cooperative hospital associations.

Some additional limitations on the scope are found elsewhere in the act. For example, the Association assumes no liability concerning policies of nonresidents issued by a foreign or alien insurer or for policies of residents issued by a foreign or alien insurer if such insurer is domiciled in a state having a comparable act. These limitations are not found in the scope section since it provides exclusion from the entire act, not just portions thereof.

Compiler's Comments

2011 Amendment: Chapter 27 deleted former (4) through (10) that established kinds of policies and contracts subject to or exempt from Title 33, ch. 10, part 2 (see 2011 Session Law for former text); and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 near end of (2) after "impairment" inserted "or insolvency"; at end of (3)(c) inserted "or insolvencies"; in (4) near beginning of first sentence substituted "life, health, and annuity policies and contracts and their supplemental contracts" for "life, health, annuity, and supplemental policies or contracts" and near end of second sentence substituted "annuities" for "agreements" and substituted "lottery annuities issued in connection with government lotteries" for "lottery contracts"; in (5)(a) after "policies or" substituted reference to certain contracts for "in the case of unallocated annuity contracts, to the persons who are contract holders"; inserted (6) relating to coverage for persons with respect to unallocated annuity contracts; inserted (7) relating to coverage for persons with respect to structured settlement annuities; inserted (8) providing exclusions from coverage; inserted (9) relating to determination of coverage when laws of more than one state apply; in (10) in introductory clause deleted former first two sentences that read: "This part covers persons specified in subsection (5)(a) for direct, nongroup life, health, annuity, and supplemental policies and contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, allocated and unallocated funding agreements, structured settlement agreements, lottery contracts, and immediate or deferred annuity contracts" and substituted "does not provide coverage for" for "does not apply to"; in (10)(a) after "or contracts" inserted reference to contracts not guaranteed by member insurer and at end substituted "policyowner" for "policyholder"; in (10)(b) after "impaired" inserted "member"; in (10)(c) after "based" inserted reference to interest rate, crediting rate, or similar factor determined by use of index or other external reference; in

(10)(d) near middle inserted "or others" and near end substituted "other person" for "similar entity"; near middle of (10)(e) inserted "or voting rights" and substituted "policyowner or contract owner" for "policy or contract holder"; in (10)(g) near beginning after "issued to" inserted "or in connection with" and after "corporation" inserted reference to liability of corporation for payments; inserted (10)(i) relating to obligations not arising under express written policy or contract terms; inserted (10)(j) relating to defined contribution benefit plan participants; inserted (10)(k) relating to interest or other changes in value; in (12) near middle after "impaired" inserted "or insolvent"; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendment: Chapter 379 in (5) substituted "policies and contracts specified in subsection (6)" for "covered policies"; in (5)(a) inserted "in the case of unallocated annuity contracts, to the persons who are contract holders"; inserted first two sentences in (6) concerning this part covering person specified in subsection (5)(a) and the contracts and agreements included in annuity contracts and certificates under group annuity contracts; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 596 substituted (4) clarifying contracts and certificates to which the part applies for former language that read: "This part shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time"; inserted (6)(c) through (6)(h) outlining additional exceptions to which the part does not apply; and made minor changes in style.

1987 Amendment: Inserted (5) listing persons to whom coverage applies.

Applicability: Section 10, Ch. 576, L. 1987, provided that the amendments to this section by Ch. 576 apply to "all occurrences that result from legal actions instituted after the effective date of this act". Effective April 20, 1987.

Source: Sections 1 through 4 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comments.

33-10-202. Definitions.

Commission Notes

This act covers "insolvent insurers" which are defined to include an insolvent insurer under an order of liquidation issued by a court of competent jurisdiction. An "impaired insurer" is an insurer deemed by the Commissioner to be unable or potentially unable to fulfill its contractual obligations. As will be treated in Section 8 on the powers and duties of the Association, this model bill enables the Association to become involved prior to an actual court order. The finding by the Commissioner that an insurer is impaired, even though not subject to a court proceeding, serves as a triggering mechanism enabling the Association to function. For further discussion see the Comment on [33-10-205, 33-10-219 (now repealed), 33-10-220 (now repealed), 33-10-223 through 33-10-225].

Subsection [(9)] defines resident for the purpose of determining on whose behalf the Association may become liable under [33-10-205, 33-10-219, (now repealed), 33-10-220 (now repealed), 33-10-223 through 33-10-225] if a foreign or alien insurer becomes insolvent.

Each state will wish to examine its own statutes to determine whether these definitions are applicable and to determine whether some should be deleted and others added.

Compiler's Comments

2019 Amendment: Chapter 25 inserted definitions of health insurance coverage and long-term care insurance; in definition of member insurer in (a) in two places after "insurer" inserted "health service corporation, or health maintenance organization" and in (b) deleted references to a health service corporation and a health maintenance organization and inserted reference to a multiple employer welfare arrangement; and made minor changes in style. Amendment effective January 1, 2020.

Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

2011 Amendment: Chapter 27 inserted definitions of authorized assessment or authorized, called, extracontractual claims, and state; in definition of contractual obligation after "under" substituted "any of the following for which coverage is provided in this part" for "covered policies", and inserted (a) through (c) relating to policies, contracts, certificates, and portions of policies, contracts, and certificates; in definition of covered policy after "contract" inserted reference to portion of policy or contract, and at end after "part" deleted "under 33-10-201(4) through (10)"; in definition of member insurer in (a) near middle after "under" substituted "this part" for "33-10-201 and 33-10-224" and after "authority" inserted "in this state", inserted (b)(ii) relating to hospital or medical service organization, and in (b)(vi) substituted "any other person" for "any entity"; in definition of owner inserted (b) excluding person with mere beneficial interest; in definition of premiums in (b)(i) after "pursuant to" substituted "this part" for "33-10-201(10)", after "based on" substituted "33-10-224(2)(b)" for "33-10-201(10)(c)", and substituted "33-10-224(3)(b)" for "33-10-224" and in (b)(iii) at end inserted "regardless of the number of policies or contracts held by the owner"; in definition of principal place of business in introductory clause before "means" deleted "of a plan sponsor", in (a) at beginning inserted "in the case of a plan sponsor", deleted former (b) that read: "(b) with respect to a plan sponsor as defined in 33-10-202(12)(c), the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan, or, in lieu of specific or clear designation of a principal place of business, the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question", in (b) in introductory clause after "participants" inserted "of a benefit plan", after "state" inserted "and for a person other than an individual", and after "operations" substituted "of the entity" for "of the plan sponsor", in (b)(i) after "headquarters" deleted "of the plan sponsor", in (b)(ii) after "officer" deleted "of the plan sponsor", in (b)(iii) after "similar" substituted "governing persons" for "governing person or persons of the plan sponsor ", in (b)(iv) after "persons" deleted "of the plan sponsor", in (b)(v) after "operations" deleted "of the plan sponsor", and inserted (c) relating to principal place of business of plan sponsor as defined; in definition of resident after "person" inserted "to whom a contractual obligation is owed and" and after "state" substituted "on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer" for "at the time that the impairment is determined and to whom contractual obligations are owed"; in definition of supplemental contract at end substituted "a life, health, or annuity contract" for "contract"; and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 inserted definition of benefit plan; in definition of covered policy substituted "33-10-201(4) through (10)" for "33-10-201(4) through (6)"; substituted definition of impaired insurer for former definition that read: ""Impaired insurer" means:

(a) an insurer that becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer considered by the commissioner to be unable or potentially unable to fulfill its contractual obligations"; inserted definition of insolvent insurer; in definition of member insurer in (b) inserted (vii) relating to organization limited to issuance of charitable gift annuities; inserted definition of Moody's corporate bond yield average; inserted definition of owner, contract owner, and policyowner; in definition of person inserted "limited liability company" and "governmental body or entity"; inserted definition of plan sponsor; substituted definition of premiums for former definition that read: "(a) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations on premiums and dividends paid or credited to policyholders on the direct business.

(b) The term does not include premiums and considerations on contracts between insurers and reinsurers.

(c) As used in 33-10-227, premiums are those for the calendar year preceding the determination of impairment"; inserted definition of principal place of business; inserted definition of receivership court; in definition of resident inserted last two sentences relating to residence of person other than individual and citizens of U.S. who are residents of foreign countries or possessions, territories, or protectorates of the U.S.; inserted definition of structured settlement annuity; inserted definition of supplemental contract; and made minor changes in style. Amendment effective July 1, 2003.

1997 Amendments: Chapter 42 in definition of account substituted "either of the two accounts" for "any of the three accounts"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 531 in definition of impaired insurer, in (a) after "insurer that", deleted "after July 1, 1974" and in (b), after "commissioner", deleted "after July 1, 1974"; in definition of member insurer, near middle of (a) after "provided under", substituted "33-10-201 and 33-10-224" for "33-2-201"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 379 substituted present definition of member insurer that includes list of entities not included in definition for former definition that read: ""Member insurer" means any person authorized to transact in this state any kind of insurance to which this part applies under subsections (4) and (6) of 33-10-201"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 596 inserted definition of unallocated annuity contract; and made minor changes in style.

1987 Amendment: In (1), in middle, changed "either" to "any"; in (4), at end, changed reference to subsections (4) and (5) of 33-10-201 to reference to subsections (4) through (6) of 33-10-201; and in (6), at end, changed reference to subsections (4) and (5) of 33-10-201 to reference to subsections (4) and (6) of 33-10-201.

Applicability: Section 10, Ch. 576, L. 1987, provided that the amendments to this section by Ch. 576 apply to "all occurrences that result from legal actions instituted after the effective date of this act". Effective April 20, 1987.

1981 Amendment: Substituted "supervision" for "conservation" in (5)(a).

Not Codified: Section 40-5805(3), R.C.M. 1947, defining "commissioner" was not codified in this list of definitions because it was redundant with the same definition at 33-1-202. This clause was not repealed and is still valid law. Citation may be made to sec. 5, Ch. 245, L. 1974. See 1-2-208, stating that amendment to codified provision is given effect over uncodified provision.

Source: Section 5 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-203. Creation of association — accounts — supervision by commissioner.

Commission Notes

Each state will wish to examine its own statutes to determine whether a corporate structure would be a more appropriate form for the Association.

Subsection [(2)] creates three accounts, for both administration and assessment purposes, the health insurance account and the life insurance account and the annuity account. These three categories of coverage would seem to be significantly different, so that persons protected by virtue of one account should not be required to pay for the protection afforded persons protected by the other accounts.

Supplementary contracts should be covered under the account in which the basic policy is covered for purposes of assessment. For example, settlement options under a life insurance contract would be covered under the life insurance account.

Compiler's Comments

2005 Amendment: Chapter 469 in (2)(b)(iii) near beginning after "must" substituted "exclude" for "include"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 195 in (2)(b)(ii) after "annuity account" inserted reference to contracts included and unallocated annuities not included; in (2)(b)(iii) substituted "contracts owned by a governmental retirement benefit plan or the plan's trustee established under section 401, 403(b), or 457" for "contracts qualified under section 403(b)"; in (3) deleted last sentence that read: "Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association"; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 596 in (2) reduced from three to two the number of primary accounts; in (2)(b), after "life insurance", inserted "and annuity"; inserted (2)(b)(i) through (2)(b)(iii) outlining subaccounts; inserted second sentence of (3) that read: "Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association"; and made minor changes in style.

Source: Section 6 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-204. Board of directors — commissioner approval — compensation.

Commission Notes

Subsection (1) provides that the number and term of the members of the board of directors shall be determined in the plan of operation. To avoid problems in initially selecting the board, this section includes a provision for a start-up meeting which will be called by the Commissioner. To determine voting rights at the organizational meeting each member insurer would have one vote. Thereafter the plan of operation will establish the voting procedures, by-laws, etc. governing the conduct of the Association.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 15, Ch. 157, L. 2023. Amendment effective April 19, 2023.

1995 Amendment: Chapter 65 in (1), in first sentence, increased number on board of directors from five to seven and inserted second sentence requiring that two board members be appointed from the public at large; and made minor changes in style.

1987 Amendment: In (2) inserted second sentence allowing compensation for designated representatives of members of the board of directors and made minor change in phraseology.

Applicability: Section 10, Ch. 576, L. 1987, provided that the amendments to this section by Ch. 576 apply to "all occurrences that result from legal actions instituted after the effective date of this act". Effective April 20, 1987.

Not Codified: Section 40-5807(1)(part), R.C.M. 1947, establishing the procedure for the initial selection of directors and organizational meeting, was not codified in the MCA as being temporary. This clause has not been repealed and is still valid law. Citation may be made to sec. 7, Ch. 245, L. 1974.

Source: Section 7 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-205. Powers and duties of association.

Compiler's Comments

2019 Amendment: Chapter 25 in (1)(a) in two places and in (2)(a) in two places after references to assume inserted references to reissue; in (2)(b)(i) substituted "ensuring payment of benefits" for "ensuring, for payment of identical premiums, payment of identical benefits, except for terms of conversion and renewability"; in (2)(b)(iv)(C) in first sentence after "policies" inserted "or contracts" and after "commissioner" deleted "or the receivership court" and in fifth sentence near beginning inserted "be actuarially justified and"; in (2)(b)(iv)(D) in third sentence inserted "must be actuarially justified and"; in (8) in first sentence substituted "approval of the commissioner" for "approval of the receivership court"; inserted (9)(j) concerning filing for actuarially justified rate or premium increases for certain policies or contracts; and made minor changes in style. Amendment effective January 1, 2020.

Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

2011 Amendment: Chapter 27 inserted (1) through (8) relating to impaired insurers, insolvent insurers, duration of association's obligation, premiums due after liquidation, failure of association to act, charges association may impose, nonliability of association for certain foreign or alien insurers, and substitute coverage; in (9)(b) after "assessments" deleted "under 33-10-228"; in (9)(f) substituted "necessary or appropriate to avoid or recover payment" for "necessary to avoid payment"; in (9)(g) after "may not" deleted "in any case" and at end after "obligations" substituted "under this part" for "of the impaired or insolvent insurer"; inserted (9)(h) relating to organization as corporation or other legal form; in (11) in first sentence near beginning after "court" inserted "or agency" and in second sentence after first "covered policies" inserted "or contracts" and after second "covered policies" substituted "or contracts" for "and contractual obligations"; inserted (12) allowing association to join organization; inserted (16) exempting protection if protection is provided by laws of another state; and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 at beginning of (1) inserted reference to other rights provided by law; at end of (1)((b) inserted reference to right to settle claims and potential claims; near end of (1)(g) after "impaired" inserted "or insolvent"; inserted (1)(h) allowing request for information from person seeking coverage; inserted (1)(i) allowing other necessary or appropriate action; in (2) inserted "liquidation" and after "impaired" inserted "or insolvent"; in (3) in first sentence near beginning after "appear" inserted "or intervene", near middle after "impaired" inserted "or insolvent", and at end inserted reference to court with jurisdiction over association's rights through subrogation or otherwise, in second sentence after "reinsuring" inserted "modifying" and after "impaired" inserted "or insolvent", and inserted third sentence relating to association's right to appear or intervene before court or agency in another state; inserted (4) allowing board of directors to exercise reasonable business judgment; inserted (5) limiting person's entitlement to benefits; inserted (6) establishing venue; and made minor changes in style. Amendment effective July 1, 2003.

Source: Section 8(6), (7), and (10) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-206. Records of meetings and negotiations.

Commission Notes

[This section] requires that records be kept of negotiations and actions by the Association. The Association should be held publicly accountable for its actions. On the other hand, effective handling of the rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by a court of competent jurisdiction.

Compiler's Comments

2003 Amendment: Chapter 195 in first sentence after "meetings" substituted "of the board of directors held" for "in which the association or its representatives are involved"; in second sentence after "meetings" inserted reference to impaired or insolvent insurer, substituted "may be made public" for "shall be made public", after "impaired" inserted "or insolvent", and after "impairment" inserted "or insolvency"; and made minor changes in style. Amendment effective July 1, 2003.

1981 Amendment: Substituted "supervision" for "conservation".

Source: Section 14(2) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-207. Immunity.

Commission Notes

Each state may wish to review its own statutes to determine whether its Tort Claims Act, if it has one, could be used as an alternative to this section insofar as it applies to the Commissioner or his representative.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 195 after "member insurer or its" substituted "agents" for "insurance producers" and after "association or" substituted "the association's agents" for "its insurance producers"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 380 after "member insurer or its" substituted "agents" for "insurance producers"; and made minor changes in style. Amendment effective October 1, 2003.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 17 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-208. Tax exemptions.

Compiler's Comments

Source: Section 16 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-209. Examination of the association — annual report.

Compiler's Comments

Source: Section 15 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-210. Unfair trade practice — notice to policyowners.

Compiler's Comments

2019 Amendment: Chapter 25 deleted former (4) and (5) that read: "(4) An insurer or an insurance producer may not deliver a policy or contract described in 33-10-224(2)(a) and excluded under 33-10-224(2)(b) from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the policyowner or contract owner a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4)." Amendment effective January 1, 2020.

Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

2011 Amendment: Chapter 27 in (2) in third sentence after "described in" substituted "33-10-224(2)(a)" for "33-10-201(4)" and at end after "contract" deleted "unless subsection (4) of this section applies"; in (4) after "described in" substituted "33-10-224(2)(a)" for "33-10-201(4)" and after "excluded under" substituted "33-10-224(2)(b)" for "33-10-201(10)"; and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 throughout section substituted references to policyowner, policyowner or contract owner, and owner for references to policyholder, policy or contract holder, and holder; at beginning of (2) deleted "Within 180 days after October 1, 1993"; in (4) substituted "33-10-201(10)" for "33-10-201(6)(a)"; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 596 inserted (2) through (5) regarding the legal description document, provision of notice of the document to the policyholder, and rulemaking authority to specify the notice form and content; and made minor changes in style.

Source: Section 14(5) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

Administrative Rules

ARM 6.6.4601 Adoption of notice.
ARM 6.6.4602 Delivery of notice.

33-10-215. Duties and powers of commissioner.

Commission Notes

Subsection [(3)] requires that the Commissioner give notice of an impairment to the impaired insurer, and hence to its stockholders, and serve a demand that the impairment be made good. If the company and stockholders fail to raise the necessary funds, this will be a factor hearing upon the stockholder's ownership rights under [33-10-226].

Subsection [(4)] provides that the Commissioner shall be appointed liquidator or rehabilitator of a domestic insurer and conservator of a foreign or alien insurer being liquidated or rehabilitated.

This subsection is not needed in those states having the Uniform Insurers Liquidation Act. Requiring the Insurance Commissioner to be the receiver is necessary to obtain the benefits of a "reciprocal" state under the Uniform Act.

Proceedings for the liquidation, rehabilitation or conservation of insurers present several difficulties which the Uniform Insurers Liquidation Act seeks to solve. Briefly, the difficulties have two sources. First, in some states the liquidator, rehabilitator, or ancillary receiver may be a person unfamiliar with insurance regulation. Inefficient administration of the proceedings may result.

Second, the laws of more than one state may be applied to the proceedings, particularly regarding ownership of assets and preferences for payment. The result is confusion and inequity in the collection and distribution of the assets. The Uniform Insurers Liquidation Act meets the first source of problems by designating the Insurance Commissioner as the receiver of a domestic insurer or the ancillary receiver of a foreign insurer. To solve the problem of multiple laws and marshalling of assets, the Uniform Act gives the receiver title to the assets. The ancillary receiver is then required to forward all assets to the receiver. The Uniform Act also details the laws under which preferences in the distribution of assets will be determined.

In drafting this model guaranty bill, particular effort was made to avoid (to the extent possible) disrupting existing state liquidation and rehabilitation laws. However, each individual state may want to consider adopting (1) the Uniform Insurers Liquidation Act, if it has not already done so (27 states have the Act—the Act has been recommended by the NAIC (See 1936 NAIC Proceedings 33)) or (2) the Rehabilitation and Liquidation Act found in Chapter 645 of the Wisconsin Statutes which has been recommended by the NAIC (See 1969 NAIC Proceedings I 241).

Compiler's Comments

2019 Amendment: Chapter 25 in (1)(a) substituted "after an order of impairment or insolvency is entered" for "not later than 3 days after a determination of impairment or insolvency is made"; after (1)(c) deleted former text that read: "(4) in any liquidation or rehabilitation proceeding involving a domestic insurer be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner must be appointed conservator"; in (4) after "rehabilitator" inserted "or conservator"; and made minor changes in style. Amendment effective January 1, 2020.

Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

2003 Amendment: Chapter 195 throughout section after references to impaired insurers and impairment inserted references to insolvent insurers and insolvency; inserted (5) relating to allowing suspension or revocation of certificate of authority or imposition of fine; inserted (6) allowing appeal to commissioner from final action of board of directors; inserted (7) allowing notification to affected person of effect of this part; and made minor changes in style. Amendment effective July 1, 2003.

Source: Section 11(1) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-216. Plan of operation — delegation of powers provision.

Compiler's Comments

2019 Amendment: Chapter 25 inserted (3)(g) concerning establishing procedures for the removal of a director for cause; inserted (3)(h) concerning requiring the board of directors to establish a policy and procedures for addressing conflicts of interests; and made minor changes in style. Amendment effective January 1, 2020.

Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

2011 Amendment: Chapter 27 in (1)(a) at end inserted "or 60 days after receipt by the commissioner's office if the commissioner does not disapprove the submitted plan of operation and any amendments within those 60 days"; in (1)(b) in first sentence after "submit" deleted "a suitable plan of operation within 180 days following July 1, 1974, or if at any time thereafter the association fails to submit"; in (3)(d) after "association" substituted "its agents" for "its insurance producers"; in (4) in first sentence after "under" substituted "33-10-205(9)(c)" for "33-10-205(1)(c)", in second sentence after "organization" substituted "to which these powers and duties are delegated must be" for "shall be", and in third sentence after "delegation" inserted "of authority" and after "subsection" substituted "may take effect" for "shall take effect"; and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 10 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-217. Prevention of insolvencies or impairments.

Compiler's Comments

2011 Amendment: Chapter 27 in (1)(a)(i) after "states" deleted "the territories of the United States, and the District of Columbia"; deleted former (7) that read: "(7) The board of directors shall, at the conclusion of any insurer impairment or insolvency in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of the impairment or insolvency, based on the information available to the association, and submit the report to the commissioner. The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of impairment or insolvency of a particular insurer and may adopt by reference any report prepared by other associations"; and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 near end of (1)(a)(i)(C) substituted "policyowners" for "policyholders"; in (5) at end of first sentence inserted reference to solvency of company seeking to provide life or health insurance; at end of (6) inserted "or insolvencies"; and in (7) in first sentence in two places after "impairment" inserted "or insolvency" and in second sentence after "causes of" inserted "impairment or". Amendment effective July 1, 2003.

1993 Amendment: Chapter 596 in (1), before "impairments", inserted "insolvencies and" and after "impairments" substituted "the commissioner shall" for "the board of directors is given the following powers and duties"; inserted (1)(a) through (1)(d) and (2) regarding duties and powers of the Commissioner in aiding in detection and prevention of insurer insolvencies or impairments; in (3), (4), (5), (6), and (7), after "board", inserted "of directors"; inserted second sentence of (7) requiring the Board of Directors to cooperate with other states in preparing a report of insolvency of a particular insurer; and made minor changes in style.

1981 Amendment: Substituted "supervision" for "conservation" in (3).

Source: Section 12(4) through (7) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-218. Examination by commissioner — cost.

Compiler's Comments

1993 Amendment: Chapter 596 at end of first sentence of (1) substituted "33-10-217(4)" for "33-10-217(2)"; and made minor changes in style.

Source: Section 12(1)(c) and (5) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-221. Nomination of liquidator by association — notification given by liquidator.

Commission Notes

[See commission notes under 33-10-215.]

Compiler's Comments

2003 Amendment: Chapter 195 in (2) after "impaired" inserted "or insolvent"; and made minor changes in style. Amendment effective July 1, 2003.

1981 Amendment: Substituted "supervision" for "conservation" in (1).

Source: Section 11 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-222. Stay of proceedings — reopening default judgments.

Commission Notes

As a means of preventing further deterioration of an insurer's financial condition, each state might consider enacting a rehabilitation and liquidation act based on present Wisconsin law which has been recommended by the NAIC as model legislation (See 1969 NAIC Proceedings I 241) or in lieu thereof that each state consider enacting the summary proceeding provisions of that law or of similar laws in other states. Such provisions would enable a Commissioner to take effective action at the earliest possible moment and thus avoid complications and further losses to policyholders and beneficiaries.

It should again be noted that each state will wish to compare the language of this model act with its statutes. Where necessary, the language used herein should be altered to conform to existing statutory language.

Compiler's Comments

2011 Amendment: Chapter 27 in (1) before "insolvent insurer" deleted "impaired or" and increased length of stay from 60 to 180 days. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 in (1) near beginning after "impaired" inserted "or insolvent"; and made minor changes in style. Amendment effective July 1, 2003.

1981 Amendment: Substituted "supervision" for "conservation" in (1).

Source: Section 18 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-223. Assignment by beneficiaries — subrogation.

Compiler's Comments

2011 Amendment: Chapter 27 in (1) near end and in (2) substituted "impaired or insolvent insurer" for "impaired insurer"; and in (3) near end after "relating to the annuity" inserted "or payment for the annuity". Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 in (1) near middle of first sentence after "covered policy" inserted reference to contract and causes of action related to a covered policy or contract and at end after "coverage" inserted reference to substitute or alternative coverage and in second sentence substituted "policyowner or contract owner" for "policy or contract owner"; inserted (3) delineating common-law rights of association; inserted (4) providing for reduction of payment obligations; inserted (5) requiring proportional repayment to association; and made minor changes in style. Amendment effective July 1, 2003.

Source: Section 8(8) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-224. Coverage, limitations, and extent of liability.

Compiler's Comments

2019 Amendment: Chapter 25 in (1)(a)(i) near beginning inserted "including health care providers"; in (1)(a)(ii) near beginning after "certificate holders" inserted "or enrollees"; in (1)(a)(ii)(B)(I) substituted "member insurer" for "insurer"; in (1)(a)(ii)(B)(III) inserted "health service corporation, or health maintenance organization"; inserted (1)(d)(iii) concerning persons who acquire rights to receive payments through structured settlement factoring transactions; in (1)(d)(ii) after "another state to the person" inserted "; or"; in (1)(d)(iii) inserted "(iii) a person who acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after 26 U.S.C. 5891(c)(3)(A) became effective"; in (2)(b) inserted "any of the following"; in (2)(b)(i) substituted "member insurer" for "insurer"; in (2)(b)(iii) at beginning inserted exception clause; in (2)(xiii) substituted "pursuant to either 42 U.S.C. 1395w-21 through 1395w-152, commonly known as medicare parts C and D, or 42 U.S.C. 1396 to 1396w-5, commonly known as medicaid, or any regulations issued pursuant to those federal statutes" for "pursuant to 42 U.S.C. 1395w-21 through 1395w-152, commonly known as medicare parts C and D, or any regulations issued pursuant to medicare parts C and D"; inserted (2)(xiv) concerning structured settlement annuity benefits; in (3)(b)(i)(B)(I) substituted "$500,000 for health insurance coverage" for "$500,000 for basic hospital, medical, and surgical insurance or major medical insurance as defined in the covered policy or contract"; in (4)(a) substituted "health insurance coverage" for "basic hospital, medical, and surgical insurance and major medical insurance"; inserted (7) concerning benefits provided by a long-term care rider to a life insurance policy or annuity contract; and made minor changes in style. Amendment effective January 1, 2020.

Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

2011 Amendment: Chapter 27 inserted (1) and (2) relating to persons and coverages provided; in (3)(a) after "obligations" deleted "of the impaired or insolvent insurer"; in (3)(b)(i) at beginning deleted "except as provided in subsection (2)"; in (3)(b)(i)(B)(II) substituted "disability income insurance" for "disability insurance as defined in the covered policy or contract"; inserted (3)(b)(i)(B)(III) relating to long-term care insurance; in (3)(b)(i)(C), (3)(b)(ii), and (3)(b)(iii) substituted "$250,000" for "$100,000"; deleted former (3)(b)(iii) that read: "(iii) with respect to any one contract owner covered by any unallocated annuity contract not included in subsection (1)(b)(ii), $5 million in benefits, irrespective of the number of contracts held by that contract owner"; in (3)(b)(iv) near beginning substituted "subsection (1)(b)" for "33-10-201(6)"; and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 in (1)(a) after "impaired" inserted "or insolvent"; at beginning of (1)(b)(i) inserted exception clause; at beginning of (1)(b)(i)(B) deleted "$100,000"; inserted (1)(b)(i)(B)(I) setting limit for basic hospital, medical, and surgical insurance or major medical insurance; inserted (1)(b)(i)(B)(II) setting limits for disability insurance; in (1)(b)(i)(B)(III) set limits for net cash surrender and net cash withdrawal values and inserted reference to prior two subsections; in (1)(b)(ii) deleted former last sentence that read: "However, the association is not liable to expend more than $300,000 in the aggregate with respect to any one individual under subsection (2)(a) and this subsection"; in (1)(b)(iii) in two places substituted "contract owner" for "contract holder"; inserted (1)(b)(iv) setting limits on present value annuity benefits; inserted (1)(b)(v) setting limits on unallocated annuity contracts; inserted (2) setting limits on aggregate benefits and benefits due to owner of multiple nongroup policies of life insurance; inserted (3) relating to use of association's subrogation and assignment rights to reduce obligations; inserted (4) exempting association from contractual obligations that do not materially affect economic values or economic benefits of covered policy or contract; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 596 substituted present section regarding extent of association liability for former section that read: "The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by 33-10-220(3), but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of $300,000."

1987 Amendment: Near middle changed "33-10-220(4)" to "33-10-220(3)".

Applicability: Section 10, Ch. 576, L. 1987, provided that the amendments to this section by Ch. 576 apply to "all occurrences that result from legal actions instituted after the effective date of this act". Effective April 20, 1987.

Source: Section 8(9) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-225. Association as creditor — use of assets.

Commission Notes

Since this Act imposes the obligation upon the Association to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage. [This section] is designed to accomplish this purpose.

Compiler's Comments

2011 Amendment: Chapter 27 in (1) and in (2) in three places substituted "impaired or insolvent insurer" for "impaired insurer"; inserted (3) relating to disbursement of assets out of marshalled assets; and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

Source: Section 14(3) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-226. Distribution of ownership rights — distribution to shareholders.

Commission Notes

[This section], in conjunction with [33-10-215(3)], is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefit of funds put up by the Association. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this Act. The court is empowered to modify and distribute the ownership rights of an impaired insurer in order to do equity as between the interested parties.

Compiler's Comments

2011 Amendment: Chapter 27 in (2) after "unless the" inserted "association has fully recovered the" and at end substituted "valid claims of the association, with interest, for funds expended in carrying out its powers and duties under this part" for "assessments levied by the association with respect to the insurer have been fully recovered by the association". Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 in three places after "impaired" inserted "or insolvent"; near end of (1) substituted "policyowners" for "policyholders"; and made minor changes in style. Amendment effective July 1, 2003.

1981 Amendment: Substituted "supervision" for "conservation" in (1).

Source: Section 14(4) of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-227. Assessments — abatement — basis for ratesetting.

Commission Notes

Subsection (2) outlines different assessment methods for assessments needed to cover foreign or alien insurers and for assessments needed to cover domestic insurers. When a foreign or alien insurer is impaired or insolvent the member insurers will be assessed on the basis of the premiums they write in the state. This corresponds to the Association's liability which is limited to covered policies of residents when the policies are issued by a foreign or alien insurer. When a domestic insurer is impaired or insolvent, the total amount to be assessed will be allocated to each state in which the impaired or insolvent insurer was authorized at any time to transact insurance in the proportion that the impaired or insolvent insurer's premium income in each state for the last calendar year preceding the assessments in which it had premium income bears to its total premium income in such calendar year. The amount allocated to each such state will then be assessed to member insurers in the proportion that the member's premium income from such state for the calendar year preceding the assessment bears to all premium income of member insurers from that state in the calendar year preceding the assessment. Thus, in making the proration it is necessary to look to the premium income of the impaired or insolvent insurer in the last year it actually received such income, but in determining each company's assessment the Association would look to the last calendar year preceding the assessment. In any case, assessments would be made separately for each account and the amount assessed from each account will be in the proportion that the total premiums of the impaired or insolvent insurer bear to the premiums of the impaired or insolvent insurer from the kind of insurance in the account.

For example, if a total assessment of $100,000 is needed for the health insurance account and the domestic impaired or insolvent insurer received 50% of its premium income from state X, then 50% of $100,000 or $50,000 will be allocated to state X. Member insurers receiving premium income from state X will then be assessed in proportion to their share of that state's market, as reflected in premium income. For example, if member insurers received $30 million in premium from state X and a certain member received $3 million of that amount, then 3/30 of the $50,000 assessment will come from this company, that is, the company will be assessed $5,000 (3/30 = 1/10 and 1/10 of $50,000 is $5,000).

This assessment system should be relatively simple to administer. More importantly, it provides a base broad enough to meet fairly large demands on the Association. Equally important, since it reflects the market share of each member in the state considered, it is an equitable method of apportioning the burden of the assessments.

The maximum assessment per year may be varied from state to state depending on the size of the base and the concentration of the business. The 2% maximum should produce an adequate amount while at the same time not impose an undue strain in any given year on the assessed companies and their policyholders.

In order to prevent further financial difficulties caused by an assessment, subsection (4) permits abatement of assessments when such financial difficulties might result.

Subsections (4) and (5) provide some limitation on the amounts which can be assessed in any given year. If these limits are reached, to fulfill its responsibilities the Association is empowered to borrow funds which later can be repaid out of future assessments.

Subsection (7) provides that a member insurer may consider in its premium rates and dividend scale an amount reasonably necessary to meet its assessment obligations. This makes it clear that the cost can be ultimately passed on to the policyowners—i.e., to persons who enjoy the protection provided by the Act.

Subsection (8) provides that the Association shall issue to assessed insurers certificates of contribution in the amount levied. The certificates may be carried by an insurer in its annual statement as an asset in such form, amount and period as may be approved by the Commissioner. By permitting the companies to carry these certificates as an asset, to the extent of their estimated value, the impact on member insurers will be lessened.

Compiler's Comments

2019 Amendment: Chapter 25 in (4)(a) deleted former last sentence that read: "The total of all non-pro rata assessments may not exceed $300 for each member insurer in any 1 calendar year"; in (4)(b) near beginning inserted "except for assessments related to long-term care insurance"; inserted (4)(c) concerning allocation of the amount of the Class B assessment for long-term care insurance; and made minor changes in style. Amendment effective January 1, 2020.

Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

2011 Amendment: Chapter 27 in (1) deleted second sentence that read: "The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due"; inserted (2) relating to due date of assessments and interest; in (3) in introductory clause after "assessments" deleted "as follows"; in (3)(a) in first sentence after "assessments" substituted "must be authorized and called" for "must be made", after "administrative" inserted "and legal", and after "other" deleted "general" and at beginning of second sentence inserted "Class A assessments may be authorized and called whether or"; in (3)(b) substituted "must be authorized and called" for "must be made" and after "under" substituted "33-10-205" for "33-10-219 and 33-10-220"; in (4)(a) in first sentence after "board" inserted "and may be authorized and called on a pro rata or non-pro rata basis", inserted second and third sentences relating to pro rata assessments, and in fourth sentence after "must be" substituted "allocated for assessment purposes" for "divided" and after "accounts" substituted remainder of sentence related to allocation formula for "in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account bear to the premiums received by the insurer on all covered policies"; in (4)(b) in first sentence after first "account" inserted "and subaccount", after "policies" inserted "or contracts", and after second "account" inserted "or subaccount", and added second sentence relating to calculation of ratio; in (4)(c) in first sentence after "insurer" substituted "may not be authorized and called" for "may not be made" and added third sentence relating to notification of pro rata share of assessment; in (5) deleted former second sentence that read: "The total of all assessments upon a member insurer for each account may not in any 1 calendar year exceed 2% of the insurer's premiums in this state on the policies covered by the account", in second sentence after "in part" deleted "because of the limitations set forth in subsection (4)" and after "deferred" substituted "may be assessed" for "must be assessed", deleted former fourth sentence that read: "If the maximum assessment, together with the other assets of the association in either account, does not provide in any 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon after that year as permitted by this part", and inserted third sentence relating to repayment of deferred assessments; inserted (6)(a) and (6)(b) relating to limitations on assessment totals and allocation of funds among claims; in (6)(c) at beginning substituted "If the maximum assessment" for "If a 1% assessment", after "assess" substituted "the other subaccounts" for "all subaccounts", and at end substituted "subsection (6)(a)" for "subsection (4)"; in (7) near middle substituted "with regard to that account" for "with regard to that amount", after "accruing from" inserted "assignment, subrogation, and", and at end after "losses" deleted "if refunds are impractical"; inserted (10) and (11) related to protest of assessment and request for information; and made minor changes in style. Amendment effective March 18, 2011.

Severability: Section 14, Ch. 27, L. 2011, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 27, L. 2011, provided: "[This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act]." Effective March 18, 2011.

2003 Amendment: Chapter 195 in four places after "impaired" inserted "or insolvent"; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 596 inserted (6) requiring assessment of subaccounts for the necessary additional amount sufficient to carry out association responsibilities under certain circumstances; and made minor changes in style.

1987 Amendment: In (2), in introductory clause, changed "three classes" to "two classes"; in (2)(b), at end before "insurer", deleted "domestic"; deleted (2)(c) that read: "(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under 33-10-219(2) and 33-10-220(2) with regard to an impaired foreign or alien insurer"; in (3)(a), near beginning of second sentence after "Class B", deleted "or C"; at beginning of (3)(b) changed "Class A and Class C" to "Class B"; deleted former (3)(c) that read: "(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bear to such premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bear to such premiums received on business in each state by all assessed member insurers"; and made minor changes in phraseology.

Applicability: Section 10, Ch. 576, L. 1987, provided that the amendments to this section by Ch. 576 apply to "all occurrences that result from legal actions instituted after the effective date of this act". Effective April 20, 1987.

Source: Section 9 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-230. Tax — writeoffs of certificates of contribution.

Commission Notes

Subsection (1) provides an offset against future premium, franchise or income taxes of assessments, over a five year period. The role of the certificate of contribution in the application of the credit, proposed in earlier drafts, has been removed with the view to minimizing the industry's federal tax, a result that may obtain if the possibility of such credit is not viewed as an admitted asset. The timing of the credit is dependent on the year the assessment is paid. It also allows the member insurer to select the applicable tax (premium, franchise or income) against which the credit may be applied and it permits member insurers going out of business to make use of the credit in their final year of operations.

The NAIC model insolvency guaranty bill for property and casualty insurance provides, in section 16, that rates "shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association . . . ." It is obvious that life insurance premiums, and premiums for certain forms of health insurance, cannot be changed on existing policyholders. Thus, recoupment is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only suitable and practical method of recoupment available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenue by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessment for tax purposes would have additional positive effects: (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic loss would be shared, to some degree, by the general public rather than solely by insureds, thus minimizing what might otherwise be a penalty on thrift and savings. It may be advisable in some jurisdictions to provide a cross-reference to the premium or other tax statutes to avoid questions of conflicting statutory provisions.

Some states allow this credit and others do not. Accordingly, this section is optional, and the NAIC neither endorses nor rejects the tax credit concept. Each state will wish to consider this provision in the light of its own regulatory experience.

Compiler's Comments

1993 Amendment: Chapter 596 in (1) substituted reference to 33-10-227(9) for reference to 33-10-227(8); in (3) substituted reference to 33-10-227(7) for reference to 33-10-227(6); and made minor changes in style.

1987 Amendment: In (1), near middle of introductory clause after "a certificate of contribution", inserted "for a Class B assessment only".

Applicability: Section 10, Ch. 576, L. 1987, provided that the amendments to this section by Ch. 576 apply to "all occurrences that result from legal actions instituted after the effective date of this act". Effective April 20, 1987.

Source: Section 13 of the Life and Health Insurance Guaranty Association Model Act, promulgated by the National Association of Insurance Commissioners (NAIC) in 1971. The states that have adopted this Model Act are listed at the chapter 10, part 2, compiler's comment.

33-10-235. Association election to continue reinsurance.

Compiler's Comments

Effective Date: Section 21, Ch. 195, L. 2003, provided that this section is effective July 1, 2003.

33-10-236. Deposits paid to association.

Compiler's Comments

Effective Date: Section 21, Ch. 195, L. 2003, provided that this section is effective July 1, 2003.

CHAPTER 11
LIABILITY RISK RETENTION AND PURCHASING GROUPS

Chapter Compiler's Comments

1987 Statement of Intent: Chapter 249, L. 1987, which enacted this chapter, contained the following statement of intent: "A statement of intent is required for this bill because section 14 [33-11-125] authorizes the commissioner of insurance of the state of Montana to make and amend reasonable rules relating to risk retention groups and purchasing groups as may be necessary or desirable to carry out the provisions of the bill. The legislature intends that the rules, which the commissioner adopts to implement this bill, be designed principally to protect Montana insurance consumers while making liability insurance more available in this state. The legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, MCA, which grants the commissioner general rulemaking authority and which permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703, MCA [now repealed]."

Severability: Chapter 249, L. 1987, which enacted this chapter, contained a severability clause in sec. 17.

Part 1
General Provisions

33-11-102. Definitions.

Compiler's Comments

1995 Amendment: Chapter 379 applied definition of completed operations liability to part rather than just former subsection (7); adjusted subsection references; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-11-103. Chartering — licensing — plan of operation.

Compiler's Comments

2019 Amendment: Chapter 271 in (12)(b)(i) substituted "director's conflicting interest transactions as defined in 35-14-860" for "conflicts provided for in 35-1-461(1)(b)(i)". Amendment effective June 1, 2020.

2015 Amendment: Chapter 370 in (4) substituted "including electronically" for "and in diskette form" and after "instructions" inserted "provided by the national association of insurance commissioners"; inserted (5) requiring risk retention groups to be in compliance with governance standards within 1 year; inserted (6) requiring the board of directors to consist of a majority of independent directors; inserted (7) relating to material service provider contracts with a risk retention group; inserted (8) requiring the board of directors to adopt a written policy in the plan of operation; inserted (9) relating to an audit committee composed of independent board members; inserted (10) requiring the audit committee to approve a written charter; inserted (11) requiring the board to adopt and disclose information standards; inserted (12) requiring adoption of a code of business conduct and ethics; inserted (13) requiring disclosure of any material noncompliance; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1993 Amendment: Chapter 596 in first sentence of (1), near beginning after "licensed", substituted "to write only casualty insurance" for "as a casualty insurer"; inserted (2) through (4) regarding provision of certain charter information to the Commissioner and filing of the information with the Department and the national association; and made minor changes in style.

33-11-104. Risk retention groups not chartered in this state.

Compiler's Comments

1995 Amendment: Chapter 379 in (1)(a) and (2)(d) substituted "33-11-102(8)" for "33-11-102(7)"; and inserted (13) concerning fines and penalties for risk retention group violating provision of this chapter.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendments — Composite Section: Chapter 451 inserted (12) regarding issuance of a proper certificate of registration; and made minor changes in style.

Chapter 596 substituted first sentence of (3)(a) regarding group liability for payment of premium taxes for "All premiums paid for coverage within this state to risk retention groups are subject to taxation at the same rate"; in (3)(b), after "report", substituted "to the commissioner the premiums of direct business for risks resident or located within this state that the licensees have" for "and pay the taxes for the premiums for risks that he has"; substituted (3)(c) regarding producer recordkeeping for former language that read: "To the extent that an insurance producer is not used or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state"; and made minor changes in style.

Chapter 451 and Ch. 596 made style changes that were slightly different. In each case, the codifier chose the more appropriate of the two.

Code Commissioner Correction: In (3)(c) the Code Commissioner substituted "33-1-408" for "33-1-403". Section 33-1-403 was repealed by Ch. 596, L. 1993. Section 33-1-408, enacted by Ch. 596, deals with the same subject matter as the repealed section. The authority for the correction is contained in sec. 84, Ch. 10, L. 1993.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

33-11-105. Compulsory associations.

Compiler's Comments

2021 Amendment: Chapter 21 in (2) at beginning deleted "Except as provided in subsection (2)(b)"; deleted former (2)(b) that read: "(b) A risk retention group is excluded from participating in the joint underwriting association provided for in 33-23-508 and related financing mechanisms"; and made minor changes in style. Amendment effective February 23, 2021.

2005 Amendment: Chapter 475 in (2)(a) at beginning inserted exception clause; inserted (2)(b) excluding a risk retention group from a joint underwriting association and related financing mechanisms; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendments: Chapter 10 at end of (2) deleted reference to Title 33, chapter 8; and made minor changes in style.

Chapter 596 at end of (2) deleted reference to Title 33, chapter 8; inserted (3) requiring that when insurance is purchased from an out-of-state insurer, risks may not be covered by a similar mechanism in this state; inserted (4) requiring that when insurance is purchased from an authorized insurer, only risks resident in this state may be covered by the state guaranty fund; and made minor changes in style.

33-11-108. Notice and registration requirements of purchasing groups.

Compiler's Comments

1995 Amendment: Chapter 379 in (1)(f) substituted "33-11-102(7)" for "33-11-102(6)"; inserted (1)(g) concerning persons controlling the activities of the group; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendments: Chapter 451 inserted (3) regarding issuance of a proper certificate of registration; and made minor changes in style.

Chapter 596 in (1)(a), after "domiciled", inserted "and all other states in which the group intends to do business"; and made minor changes in style.

1991 Amendment: Inserted (1)(d) requiring a purchasing group to identify the Montana-licensed producer through which the group intends to place its business.

Severability: Section 5, Ch. 180, L. 1991, was a severability clause.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

33-11-109. Restriction on insurance purchased by purchasing groups.

Compiler's Comments

1993 Amendment: Chapter 596 near end of (1), after "producer", deleted "or broker"; inserted (3) requiring certain notification when liability insurance is obtained from an out-of-state insurer or risk retention group; inserted (4) precluding purchase of insurance that provides for a deductible or self-insured retention; and inserted (5) applying standards regarding aggregate limits.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-11-123. Duty of insurance producers to obtain license.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

CHAPTER 12
INSURER INVESTMENTS

Part 1
General Provisions

Part Compiler's Comments

Effective Date: Section 52, Ch. 304, L. 1999, provided that this part was effective July 1, 1999.

33-12-103. General investment qualifications.

Compiler's Comments

2001 Amendment: Chapter 227 in (1) near beginning of third sentence substituted "investments under 33-2-1103" for "investments under 33-2-1113". Amendment effective October 1, 2001.

33-12-104. Authorization of investments by board of directors.

Compiler's Comments

2019 Amendment: Chapter 271 in (6) at end substituted "35-14-830" for "35-1-418". Amendment effective June 1, 2020.

33-12-107. Valuation of investments.

Compiler's Comments

2005 Amendment: Chapter 469 near middle after "Purposes and Procedures" inserted "Manual"; and made minor changes in style. Amendment effective October 1, 2005.

33-12-113. Indemnification agreement.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Part 2
Life and Health Insurers

Part Compiler's Comments

Effective Date: Section 52, Ch. 304, L. 1999, provided that this part was effective July 1, 1999.

33-12-202. General 5% diversification — medium-grade and lower-grade investments — Canadian investments.

Compiler's Comments

2001 Amendment: Chapter 227 near end of (1)(a) substituted "5% of its admitted assets" for "3% of its admitted assets"; at beginning of (3)(b) substituted "The 5% limitation" for "The 3%

limitation"; and in (3)(c) at end of second sentence substituted "5% of its admitted assets" for "3% of its admitted assets". Amendment effective October 1, 2001.

33-12-203. Rated credit instruments.

Compiler's Comments

2001 Amendment: Chapter 227 inserted (8) providing that subsections (2) through (4) are not subject to the limitation in 33-12-202(1). Amendment effective October 1, 2001.

33-12-212. Additional investment authority.

Compiler's Comments

2001 Amendment: Chapter 227 at end of (1)(a) and (2)(b) substituted "5% of its admitted assets" for "3% of its admitted assets". Amendment effective October 1, 2001.

Part 3
Property and Casualty, Financial Guaranty, Mortgage Guaranty, Surety, Marine, and Title Insurers

Part Compiler's Comments

Effective Date: Section 52, Ch. 304, L. 1999, provided that this part was effective July 1, 1999.

CHAPTER 14
INSURANCE PREMIUM FINANCE COMPANIES

Part 1
General Provisions

33-14-102. Definitions.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: Inserted (4) defining unearned premium.

Part 2
Licensing

33-14-201. License required — fee — renewal of license.

Compiler's Comments

1993 Amendment: Chapter 451 substituted present (4) regarding entities of whom a license is not required for former language that read: "No person other than a savings and loan association, bank, trust company, or licensed finance company, credit union, or resident insurance producer who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection may engage in the business of entering into, acquiring, or holding insurance premium finance agreements unless licensed to do so by the commissioner"; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-14-202. Applicant qualifications — hearing.

Compiler's Comments

2001 Amendment: Chapter 227 in (1) in first sentence after "the commissioner" substituted "may make a background examination" for "shall make an investigation" and substituted second sentence regarding written demand for hearing for former sentence that read: "If the commissioner does not so find, he shall within 30 days after he has received the application, at the request of the applicant, give the applicant a full hearing"; and made minor changes in style. Amendment effective October 1, 2001.

33-14-203. License revocation — suspension.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

33-14-204. Records required of licensees — form — inspection.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Operation and Regulation

33-14-301. Premium finance agreements — contents — form — delivery.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-14-302. Charges for premium financing regulated — method of computation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-14-304. Cancellation of insurance upon default.

Compiler's Comments

1995 Amendment: Chapter 379 in (2), at beginning of first sentence, deleted "Not less than 10 days"' and inserted second sentence requiring the notice to be mailed at least 10 days prior to the date stated in the notice; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-14-305. Return of unearned premiums.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of first sentence of (1), after "canceled", inserted "by a person other than the insured"; and made minor changes in style.

1987 Amendment: In (1), at end of first sentence, inserted "the insurer shall process cancellation of the financed insurance policy on a pro rata basis" and made minor changes in phraseology.

33-14-307. Exceptions.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

CHAPTER 15
THE INSURANCE CONTRACT

Chapter Case Notes

Tort of Malicious Prosecution Occurs on Commencement of Judicial Proceeding on Which Malicious Prosecution Claim Is Based. Farmers Ins. Exch. v. Minemyer, 2023 MT 138, 413 Mont. 60, 532 P.3d 837.

Underinsured Motorist Coverage — Attorney Fees Not Reliant on Prevailing on Every Issue — Reasonableness: A plaintiff prevailed on a portion of underinsured motorist insurance contract issues on appeal. Because the plaintiff was forced to bring an action to obtain the full benefit of the insurance contract, regardless of whether the plaintiff prevailed on every issue, the plaintiff was entitled to recover reasonable attorney fees. However, because the plaintiff did not prevail on all claims, reasonable fees may not include efforts undertaken to pursue positions on which the plaintiff did not ultimately prevail. Cramer v. Farmers Ins. Exch., 2018 MT 198, 392 Mont. 329, 423 P.3d 1067.

Underinsured Motorist Claim — Verdict for Insured in Excess of Insurer's Last Offer — Recovery of Reasonable Attorney Fees — Extension of Insurance Exception to American Rule: When a first-party insured is compelled to pursue litigation and a jury returns a verdict in excess of the insurer's last offer to settle an underinsured motorist claim, the insurer must pay the first-party insured's attorney fees in an amount subsequently determined by the District Court to be reasonable. In addition, if a first-party insured goes to trial and obtains a verdict in excess of the insurer's last offer, it is prima facie proof that the insured was forced to assume the burden of legal action to obtain the full benefit of the policy, but if the policy limits are tendered prior to a verdict, the District Court may consider to what extent the insured assumed the burden of legal action to recover the full benefits of the insurance contract. Mlekush v. Farmers Ins. Exch., 2017 MT 256, 389 Mont. 99, 404 P.3d 704. See also King v. St. Farm Mut. Auto. Ins. Co., 2019 MT 208, 397 Mont. 126, 447 P.3d 1043, in which the Supreme Court extended its holding in the Mlekush cases to provide that the insurance exception to the American rule allows an insured to recover both taxable and nontaxable costs from an insurer.

Excess Insurer's Policy Ambiguous — General Aggregate Term Not Defined — Duty to Indemnify and Defend — Attorney Fees: In a declaratory action relating to a gasoline spill from a leased truck onto several homeowners' land, the plaintiff, an insurer providing excess insurance, argued that its $4 million policy limit had been met. The excess insurance policy provided limits of $4 million for each occurrence and stated a $4 million "general aggregate" that was not defined. The plaintiff argued that the "general aggregate" provided a $4 million total limit for all coverages under the policy. The District Court disagreed, finding that because the policy did not define the term "general aggregate," when taken as a whole the policy was reasonably subject to at least two interpretations. The District Court then construed the policy against the plaintiff, awarding an additional $4 million in coverage and holding that the defendants, the homeowners, were entitled to attorney fees because the plaintiff breached its duties to indemnify and defend. On appeal, the Supreme Court affirmed in part, agreeing that the policy was ambiguous and that the award of attorney fees was proper because the plaintiff breached its duty to indemnify. However, the Supreme Court reversed the District Court's determination that the plaintiff breached its duty to defend because the plaintiff resumed its respective duties after the defendants argued for the additional $4 million in coverage. Westchester Surplus Lines Ins. Co. v. Keller Transp., Inc., 2016 MT 6, 382 Mont. 72, 365 P.3d 465.

Entirety of Litigation to Be Considered to Determine Whether Insured Forced to Assume Burden of Legal Action: The plaintiff was involved in a collision with another driver who admitted liability for the accident and for the plaintiff's resulting injuries. The plaintiff recovered the policy limit from the other driver but sought underinsured motorist coverage from her insurer. Ultimately, the plaintiff filed an action against her insurer for amounts due under her policy. After a jury verdict in her favor, the plaintiff moved for nontaxable costs and attorney fees, which the District Court denied. On appeal, the Supreme Court concluded that while the "insurance exception" to the American rule on the recovery of attorney fees may apply when the insurer forces the insured to assume the burden of legal action to obtain the full benefit of the insurance contract, the District Court failed to make any factual findings that considered both parties' actions during the entire process leading up to the resolution of the claim. The Supreme Court reversed the District Court's order and remanded for further proceedings. Mlekush v. Farmers Ins. Exch., 2015 MT 302, 381 Mont. 292, 358 P.3d 913, overruled in part by Mlekush v. Farmers Ins. Exch., 2017 MT 256, 389 Mont. 99, 404 P.3d 704. See also King v. St. Farm Mut. Auto. Ins. Co., 2019 MT 208, 397 Mont. 126, 447 P.3d 1043, in which the Supreme Court extended its holding in the Mlekush cases to provide that the insurance exception to the American rule allows an insured to recover both taxable and nontaxable costs from an insurer.

Ambiguous Products — Completed Operations Hazard Coverage Insurance Provision Construed Against Drafter: An insurance policy did not reflect a payment for products-completed operations hazard coverage (PCOH), but it did provide limits for PCOH. Because ambiguities in an insurance policy are construed against the insurer, the policy provided PCOH. Scentry Biologicals, Inc. v. Mid-Continent Casualty Co., 2014 MT 39, 374 Mont. 18, 319 P.3d 1260.

Failure to Clarify Finding of Fraud Precludes Insurer's Defense: An insurer of a pest control product argued that a threshold insurance provision applied only to "accidents", excluding any fraudulent, intentional acts. Although the pest control company that created the product was found liable in a Michigan court for fraud in the inducement, under Michigan law, fraudulent inducement may be intentional, reckless, or negligent. The insurer failed to seek clarification from the Michigan court concerning the nature of the inducement, and the Supreme Court found that the insurance policy's threshold requirement had been satisfied. Scentry Biologicals, Inc. v. Mid-Continent Casualty Co., 2014 MT 39, 374 Mont. 18, 319 P.3d 1260.

Insurance Coverage for Intentional Dumping of Hazardous Waste Denied Under Policy Exclusion: For more than 3 years, defendant disposed of hazardous waste solvents into a sanitary landfill. The solvents migrated into the ground water, and neighbors sued defendant for personal injury and property damages. Defendant sought coverage from plaintiff insurer to remediate the damages and costs for the third-party suits, and the insurer eventually sought a declaration that it owed no duty to provide insurance coverage and defense costs for the environmental claims. Defendant's insurance policy contained a pollution exclusion that barred coverage for environmental damage unless the pollution was sudden or accidental. The District Court granted plaintiff summary judgment, and defendant appealed. The Supreme Court applied general rules of contract law, strictly construing the policy provisions in favor of defendant, but affirmed summary judgment absent ambiguity in the policy language. Under the policy, the initial disposal, rather than the migration and any resulting damages, had to be sudden and accidental in order to fall within the pollution exclusion clause. Defendant's routine intentional disposal of waste over a period of years could not be considered sudden or accidental, so defendant was unable to establish that the claims fell within the basic scope of coverage. Thus, plaintiff had no duty to defend defendant, and summary judgment for plaintiff was proper. Travelers Cas. & Sur. Co. v. Ribi Immunochem Research, Inc., 2005 MT 50, 326 M 174, 108 P3d 469 (2005). See also Bozeman v. AIU Ins. Co., 272 M 349, 900 P2d 929 (1995), and Makarka v. Great Am. Ins. Co, 14 P3d 964 (Alaska 2000).

Recoupment of Costs Provided for Defense of Claims Outside Insurance Policy Coverage: Plaintiff defended claims from third parties against defendant, but the claims were subsequently determined to be barred by exclusionary language in defendant's policy. Plaintiff sought to recoup the costs expended on defendant's behalf, and the District Court awarded plaintiff's costs. On appeal, the Supreme Court affirmed the award. Plaintiff timely and explicitly reserved the right to recoup the defense costs by notifying defendant of plaintiff's reservation of rights prior to paying the costs and thus expressly reserved its right to recoup defense costs if a court determined that plaintiff had no duty to provide the costs. Defendant implicitly accepted plaintiff's reserved rights by posing no objection to the reservation. Travelers Cas. & Sur. Co. v. Ribi Immunochem Research, Inc., 2005 MT 50, 326 M 174, 108 P3d 469 (2005). See also Grinnell Mut. Reins. Co. v. Shierk, 996 F. Supp. 836 (S.D. Ill. 1998), United Nat'l Ins. Co. v. SST Fitness Corp., 309 F3d 914 (6th Cir. 2002), and Horace Mann Ins. Co. v. Hanke, 2013 MT 320, 372 Mont. 350, 312 P.3d 429.

Insurer's Breach of Duty to Indemnify — Recovery of Attorney Fees by Injured Third-Party Claimant Who Prevails in Insurance Coverage Action Against Motor Vehicle Liability Insurer — Modification of Insurance Exception — Standard of Review of Question of Law: Following remand in Christensen v. Mtn. W. Farm Bureau Mut. Ins. Co., 2000 MT 378, 303 M 493, 22 P3d 624 (2000), the Christensens requested attorney fees incurred in the declaratory judgment action. The District Court denied the request, and the Christensens appealed. Generally, under the American rule, a party in a civil action is not entitled to attorney fees absent a specific contractual or statutory provision, although equitable exceptions are recognized. Here, the parties agreed that there was no contractual authority to support an award of attorney fees, although the Supreme Court held in Trustees of Ind. Univ. v. Buxbaum, 2003 MT 97, 315 M 210, 69 P3d 663 (2003), that 27-8-313 authorizes a District Court to award attorney fees when the court, in its discretion, considers such an award to be necessary or proper. The Christensens submitted that the defendant insurer was obligated to reimburse them based on the insurance exception rationale articulated in Home Ins. Co. v. Pinski Bros., Inc., 160 M 219, 500 P2d 945 (1972), which approved an award of attorney fees in cases in which an insurer breaches its obligation to defend an insured. The Supreme Court noted that the issue presented a question of law, so the standard of review was whether the District Court's interpretation of law was correct. The Supreme Court held that an insurer that breaches its duty to indemnify is liable for attorney fees when an insured is forced to assume the burden of legal action to obtain the full benefit of the insurance contract, regardless of whether the insurer's duty to defend is at issue. However, in this case, the Christensens were third-party beneficiaries, and the Supreme Court declined to extend the insurance exception to third-party claimants because that would sanction attorney fee awards for simply demonstrating the existence of any insurance contract from which a third-party claimant successfully established coverage, which would undermine the American rule. Thus, although the Christensens were precluded from recovering attorney fees under the obligatory insurance exception, the case was remanded for a determination of whether attorney fees were necessary or proper under 27-8-313 and Trustees of Ind. Univ. v. Buxbaum. Mtn. W. Farm Bureau Mut. Ins. Co. v. Brewer, 2003 MT 98, 315 M 231, 69 P3d 652 (2003), overruling Yovish v. United Serv. Auto. Ass'n, 243 M 284, 794 P2d 682 (1990), and followed in Hernandez v. Yellowstone County Comm'rs, 2008 MT 251, 345 M 1, 189 P3d 638 (2008), with regard to award of attorney fees only to a prevailing party under the private attorney general theory.

Requested Coverage Provided — Malpractice Claim Unfounded: Insureds alleged insurance company malpractice based on a breach of the company's duty to sell insurance to properly cover the insureds' needs. Summary dismissal of the claim was proper in light of insured's admission that the company provided the coverage requested. Kaseta v. NW. Agency of Great Falls, 252 M 135, 827 P2d 804, 49 St. Rep. 183 (1992).

Part 1
Scope and Definitions

33-15-101. Scope.

Compiler's Comments

1981 Amendment: Inserted "33-15-102", "33-15-303", "33-15-307", and "33-15-411" in the list of sections in (4); made minor changes in phraseology.

33-15-102. Definitions.

Case Notes

Application as Part of Policy: Under section 40-401, R.C.M. 1947 (predecessor to this section, since repealed), and section 40-403, R.C.M. 1947 (predecessor to 33-15-302, MCA, since repealed), the application for life insurance was not a part of the policy unless incorporated therein by reference or otherwise. Schroeder v. Metropolitan Life Ins. Co., 103 M 547, 63 P2d 1016 (1936).

33-15-103. Power to contract — purchase of insurance by minors.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted "district court" for "probate court" in (3).

Part 2
Insurable Interests

33-15-201. Restrictions on contracting for personal insurance — insurable interests — violation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Inserted (5) concerning insurable interest in individual by charitable institution if individual authorizes institution to purchase insurance naming institution as irrevocable beneficiary and if insurance is purchased with individual's contributions. Amendment effective April 26, 1991.

Retroactive Applicability: Section 4, Ch. 670, L. 1991, provided that this section applies retroactively to taxable years beginning after December 31, 1990.

1981 Amendment: Substituted "personal representative" for "executor or administrator, as the case may be" in (2).

33-15-205. Restrictions on property insurance — interest.

Case Notes

Purchase of Real Estate — Failure to Close — No Insurable Interest: Bartlett obtained an insurance binder from Allstate on a house that Bartlett intended to buy. The transaction did not close, and the house was destroyed by fire 1 month later. Allstate denied Bartlett's claim for recovery. Bartlett sued for wrongful denial of insurance proceeds and unfair trade practices. The District Court granted summary judgment to Allstate. On appeal, the Supreme Court held that the lower court did not err and affirmed the summary judgment ruling. When Bartlett failed to eliminate a prior judgment lien, the condition precedent to the buy-sell agreement was not met, the agreement was terminated, and the bank was the unconditional owner of the property. Bartlett did not have an insurable interest in the property at the time of loss. Bartlett v. Allstate Ins. Co., 280 M 63, 929 P2d 227, 53 St. Rep. 1300 (1996).

Reserved Right of Possession — Insurable Interest: Oil companies which sold certain property but reserved possession and use until full payment was made or until operation of property ceased to be profitable had an "insurable interest" in property which could be covered by fire policy, particularly where companies were required to replace property. Rice Oil Co. v. Atlas Assurance Co., Ltd., 102 F2d 561 (1939).

Agent for Undisclosed Principal — No Insurable Interest: Agent for undisclosed principal took title to land and building purchased for principal in his own name and procured fire insurance policies naming himself as the owner and insured. While the principal's equitable ownership was an insurable interest, the agent had no insurable interest, and under section 40-211, R.C.M. 1947 (since repealed), the contract of insurance was not enforceable. Stevens v. Steck, 101 M 569, 55 P2d 7 (1936).

Right of Redemption as Insurable Interest: While after a sale of real property under execution or order of sale, the judgment debtor has no title to the property sold and thereafter his right to redeem is but a personal privilege, such right of redemption is an insurable interest which continues to exist after foreclosure sale and before the time of redemption has expired, which he may assign. If it is assigned, the right to recover for a fire loss sustained during the period covered by the policy passes to the assignee. Baker v. Pa. Fire Ins. Co., 81 M 271, 263 P 93 (1928).

Point in Time When Insurable Interest Held: If one insuring property against fire has no insurable interest therein, the contract is void, and under section 40-212, R.C.M. 1947 (since repealed), an interest insured must exist when the insurance takes effect and when the loss occurs. Libby Lumber Co. v. Pac. States Fire Ins. Co., 79 M 166, 255 P 340 (1927).

Sufficiency of Allegation of Ownership in Pleadings: Complaint in an action to recover on a policy of hail insurance alleging that plaintiff "had" a certain number of acres of wheat growing was sufficient to show that he was the owner of the crop and therefore had an insurable interest therein. Pasherstnik v. Cont. Ins. Co., 67 M 19, 214 P 603 (1923).

33-15-206. Interest of named insured — change of interest on death — transfer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Undisclosed Principal: Where agent for undisclosed principal purchased land and building in his own name and procured fire insurance policies naming himself as sole owner and insured and interest of the principal was not shown as required by sections 40-404 and 40-405, R.C.M. 1947 (since repealed), the principal could not enforce the policies. Stevens v. Steck, 101 M 569, 55 P2d 7 (1936).

Part 3
Policy Provisions

Part Case Notes

General 310
Construction 321
Coverage of Punitive Damages 338

GENERAL

Complaint Failed to Allege Bodily Injury — Self-Serving Affidavits in Response to Motion for Summary Judgment Insufficient Evidence of Physical Manifestations of Injury to Trigger Coverage Under Bodily Injury Clause. Farmers Ins. Exch. v. Minemyer, 2023 MT 138, 413 Mont. 60, 532 P.3d 837.

No Duty to Defend Against Slander Claim When Claim in Underlying Lawsuit Undated — Not Alleged to Have Been Committed During Insurance Policy Periods. Farmers Ins. Exch. v. Minemyer, 2023 MT 138, 413 Mont. 60, 532 P.3d 837.

No Duty to Defend Under Property Damage Clause — "Property Damage" Defined as Loss of Use of Tangible Property Not Physically Injured — Allegation of Economic Loss Does Not Constitute Loss of Use. Farmers Ins. Exch. v. Minemyer, 2023 MT 138, 413 Mont. 60, 532 P.3d 837.

Tort of Malicious Prosecution Occurs on Commencement of Judicial Proceeding on Which Malicious Prosecution Claim Is Based. Farmers Ins. Exch. v. Minemyer, 2023 MT 138, 413 Mont. 60, 532 P.3d 837.

No Duty to Defend or Indemnify — Claims Outside of Policy Coverage — Summary Judgment in Favor of Insurer Proper. Christian v. United Fire & Cas. Co., 2023 MT 100, 412 Mont. 340, 530 P.3d 456.

Delay in Seeking Declaratory Judgment — Breach of Duty to Defend: The plaintiff insurance company provided the defendant, the state of Montana, with a comprehensive general liability policy from 1973 to 1976. In 2000, Libby Mine claimants started suing the state for its regulatory role of the Libby Mine based on the theory that the state had failed to warn them of the danger of asbestos exposure. In 2006, the insurance company offered a tender of a full defense to the state subject to a reservation of rights. The state rejected the offer and continued defending itself against the asbestos claims. Six years after offering to defend subject to a reservation of rights, the plaintiff sought a declaratory judgment over its rights and duties under the liability policy. The District Court held that the plaintiff had breached its duty to defend, not by reserving its rights but by its 6-year delay in seeking judicial resolution of its reserved coverage issues. On appeal, the Supreme Court agreed that the delay constituted a breach and affirmed. Nat'l Indemnity Co. v. St., 2021 MT 300, 406 Mont. 288, 499 P.3d 516.

Offer of Pro Rata Defense — Breach of Duty to Defend — Reservation of Rights, No Breach Proper: The plaintiff insurance company provided the defendant with a comprehensive general liability policy from 1973 to 1976. In 2000, Libby Mine claimants started suing the state for its regulatory role of the Libby Mine based on the theory that the state had failed to warn them of the danger of asbestos exposure. In 2002, the state tendered the claims to the plaintiff while the state was defending against the claims, and ultimately, the plaintiff sought a declaratory judgment over its rights and duties under the liability policy. The District Court concluded that the plaintiff had breached its duty to defend in 2005 when the plaintiff told the state it would pay only a share of defense costs. However, the District Court held that the plaintiff had not breached its duty when it later offered the state a full defense under a reservation of rights. On appeal, the Supreme Court affirmed. Nat'l Indemnity Co. v. St., 2021 MT 300, 406 Mont. 288, 499 P.3d 516.

Declaratory Judgment Action — Duty of Insurer to Defend and Indemnify — District Court Error as Matter of Law: The plaintiff, an insurance company, filed an action for declaratory judgment that it did not have a duty to defend or indemnify the defendants in a wrongful death lawsuit. The District Court denied the motion for summary judgment and held that the plaintiff had a duty to defend one of the defendants as an additional insurer under the policy. On appeal, the Supreme Court reversed, holding that the District Court erred as a matter of law and that the defendant did not meet the contractual requirement to be an automatic additional insured under the policy. Employers Mut. Cas. Co. v. Estate of Buckles, 2019 MT 136, 396 Mont. 153, 443 P.3d 534.

Fire Disposing of Felled Trees That Posed Risk to Vehicles — No Coverage for Damages Caused by Fire Under Motor Vehicle Policy: The neighbor of the plaintiff felled dead trees on his property because he was concerned they might fall on his work vehicles. After felling the trees, he burned them and ashes from that fire caused another fire that damaged the plaintiff's property. The neighbor conceded negligence and assigned the rights to his insurance to the plaintiff, who then sued the defendant insurance company. Although the defendant denied coverage, the District Court granted summary judgment in the plaintiff's favor. On appeal, the Supreme Court reversed, holding that the fire did not result from the maintenance of the neighbor's vehicles. The Supreme Court explained that the neighbor's decision to burn the trees after they had been cut and no longer posed a threat to his vehicles was not an inherent part of vehicle maintenance. Assoc. Dermatology & Skin Cancer Clinic of Helena, P.C. v. Mtn. West Farm Bureau Mut. Ins. Co., 2017 MT 30, 386 Mont. 298, 389 P.3d 1027.

Amount of Settlement Contested by Insurer — Potential for Windfall for Plaintiff — Error to Deny Reasonableness Hearing and Discovery: The plaintiff sued several defendants related to the alleged defective construction of a building. During the construction, the contractor was insured by two different insurers during different time spans. The defendant contractor attempted to seek coverage and defense from one of its insurers, who denied coverage. The other insurer tendered a defense for the contractor under a reservation of rights. Ultimately, the contractor settled with the plaintiff for more than $5 million and assigned his rights to the plaintiff, who then filed suit against the insurer, alleging it was liable to pay the settlement. The District Court ordered the insurer to pay the settlement. The insurer unsuccessfully requested a hearing on the reasonableness of the amount of the settlement and to conduct discovery related to the reasonableness determination. On appeal, the Supreme Court reversed, holding that the insurer had shown that the plaintiff was possibly receiving a $2 million windfall under the settlement. The court remanded the matter for discovery and a hearing on the reasonableness of the settlement amount. J & C Moodie Properties, LLC v. Deck, 2016 MT 301, 385 Mont. 382, 384 P.3d 466.

Duty to Defend Breached — Insured Represented by Another Insurer Under Reservation of Rights: The plaintiff sued several defendants related to the alleged defective construction of a building. During the construction, the contractor was insured by two different insurers during different time spans. The defendant contractor attempted to seek coverage and defense from one of its insurers, who denied coverage. The other insurer tendered a defense for the contractor under a reservation of rights. Ultimately, the contractor settled with the plaintiff and assigned his rights to the plaintiff, who then filed suit against the insurer who had denied coverage, alleging it had breached its duty to defend and was liable to pay the settlement. The District Court ruled that the insurer had breached its duty to defend and ordered the insurer to pay the settlement. On appeal, the Supreme Court affirmed, holding that the insurer was not absolved of its duty to defend simply because the insured was being represented by another insurer under a reservation of rights. J & C Moodie Properties, LLC v. Deck, 2016 MT 301, 385 Mont. 382, 384 P.3d 466.

Excess Insurer's Policy Ambiguous — General Aggregate Term Not Defined — Duty to Indemnify and Defend — Attorney Fees: In a declaratory action relating to a gasoline spill from a leased truck onto several homeowners' land, the plaintiff, an insurer providing excess insurance, argued that its $4 million policy limit had been met. The excess insurance policy provided limits of $4 million for each occurrence and stated a $4 million "general aggregate" that was not defined. The plaintiff argued that the "general aggregate" provided a $4 million total limit for all coverages under the policy. The District Court disagreed, finding that because the policy did not define the term "general aggregate," when taken as a whole the policy was reasonably subject to at least two interpretations. The District Court then construed the policy against the plaintiff, awarding an additional $4 million in coverage and holding that the defendants, the homeowners, were entitled to attorney fees because the plaintiff breached its duties to indemnify and defend. On appeal, the Supreme Court affirmed in part, agreeing that the policy was ambiguous and that the award of attorney fees was proper because the plaintiff breached its duty to indemnify. However, the Supreme Court reversed the District Court's determination that the plaintiff breached its duty to defend because the plaintiff resumed its respective duties after the defendants argued for the additional $4 million in coverage. Westchester Surplus Lines Ins. Co. v. Keller Transp., Inc., 2016 MT 6, 382 Mont. 72, 365 P.3d 465.

Quasi-Judicial Immunity for Guardian Ad Litem to Collect Debt From Party: A court-ordered guardian ad litem attempted to enforce collection of a debt owed by the plaintiff for services provided as ordered by the court. The plaintiff then sued the defendant, the guardian ad litem, for violating the Montana Consumer Protection Act. The District Court granted the defendant summary judgment, holding that the defendant was entitled to quasi-judicial immunity from the consumer protection claim under 2-9-112. On appeal, the Supreme Court affirmed the ruling, holding that the defendant was acting within the scope of her duties as guardian ad litem when she sought to collect the debt for services rendered. Amour v. Collection Professionals, Inc., 2015 MT 150, 379 Mont. 344, 350 P.3d 71.

Notice-Prejudice Rule Applicable in First-Party Insurance Coverage: The notice-prejudice rule applies to first-party insurance coverage disputes. Under this rule, an insurer may deny coverage based on an insured's failure to comply with a policy notice provision only if the insurer can demonstrate that it was prejudiced by the late notice. Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

No Breach of Duty to Defend When Insured Fully Defended — Duplicative Counsel by Coinsurer Unnecessary: The parents of a woman who died in a car accident sought compensation from two different insurers of the driver's parents and his estate. The two insurers worked together to ensure that their insureds were defended, although only one of the insurers paid the costs of counsel. As a part of a consent judgment, the rights of the insureds were assigned to the decedent woman's parents. The parents then argued that the insurer who did not pay the costs of defending had breached its duty to defend and was estopped from denying coverage. The District Court agreed and granted the parents summary judgment. The District Court also ordered the insurer to pay the full amount of the consent judgment as well as attorney fees and costs. On appeal, the Supreme Court reversed, ruling that as long as the insureds were fully defended, the duty to defend did not require both insurers to provide separate counsel when their combined efforts would be duplicative. St. Farm Fire and Cas. Co. v. Schwan, 2013 MT 216, 371 Mont. 192, 308 P.3d 48.

Failure to Notify of Claim Pursuant to Plain Language of Insurance Policy — No Coverage — Summary Judgment Proper: The plaintiffs sued a construction company for faulty construction of their home and were awarded a default judgment in the amount of nearly $2 million after the construction company failed to appear. The plaintiffs then secured a judgment and requested payment from the construction company's insurance company. The insurance company denied coverage on the basis that its insured never provided notice of the claim as required by the insurance policy and that the insured's failure to provide notice resulted in prejudice to the insurance company. The District Court agreed and granted the insurance company's motion for summary judgment. On appeal, the Supreme Court affirmed the grant of summary judgment, given that the notice requirements in the insurance policy were simple and clear and that by not receiving notice, the insurance company had been deprived of the ability to adequately investigate and litigate the claim against its insured. Steadele v. Colony Ins. Co., 2011 MT 208, 361 Mont. 459, 260 P.3d 145. See also Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349, expressly adopting the notice-prejudice rule in the first-party insurance coverage context. But see Atlantic Casualty Ins. Co. v. Greytak, 2015 MT 149, 379 Mont. 332, 350 P.3d 63.

Insurer Duty to Defend Against Subcontractor-Caused Damages From Faulty Product Provided by Subcontractor Under Policy Conditions: Defendant insurer contended that it had no duty to defend against subcontractor-caused damages. Generally, an insurer has no duty to defend the insured if there is no liability to the insured under the policy provisions. However, in this case plaintiff's subcontractor provided a faulty product that was passed on to and accepted by plaintiff before the defect was discovered. The insurer had knowledge of the subcontractor involvement even though it was not mentioned in the complaint. Under these circumstances, the policy provided coverage for the subcontractor-caused damages, and the insurer had a duty to defend and indemnify plaintiff. The District Court's holding that there was no duty to defend was reversed and the case was remanded for further proceedings. Revelation Indus., Inc. v. St. Paul Fire & Marine Ins. Co., 2009 MT 123, 350 M 184, 206 P3d 919 (2009). See also NW. Nat'l Cas. Co. v. Phalen, 182 M 448, 597 P2d 720 (1979), and Geraldine v. Mont. Municipal Ins. Authority, 2008 MT 411, 347 M 267, 198 P3d 796 (2008).

Ohio Law Applied to Disallow Stacking of Coverages — Offsets Allowed: The District Court conducted a conflict of law analysis and concluded that Ohio law governed Modroo's entitlement to damages for an accident that occurred in Montana under a personal auto policy that Modroo obtained in Ohio. Under Ohio law, stacking of policy coverages is disallowed and offsets are allowed. Citing Csulik v. Nationwide Mut. Ins. Co., 723 NE 2d 90 (Ohio 2000), Modroo contended that the policy's multiple choice-of-law provisions resulted in ambiguity and that Montana law should have applied because it is more favorable to the insured. The Supreme Court disagreed and noted that although the policy provided for payment of compensatory damages under Montana tort law while also providing that Ohio law governed interpretation of the contract, the presence of two choice-of-law provisions did not necessarily create an ambiguity. The issue of stacking policies was a question of contract law rather than tort law, so the Ohio law applied. Likewise, the provisions in the policy that any amounts available under uninsured motorist coverage would be offset by any amounts available for payment by or on behalf of any liable parties also presented a question of contract law, so Ohio law applied to that issue as well. The Supreme Court declined to overrule its choice of law principles. The District Court did not err in applying Ohio law to the stacking and offset issues. Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008). The Modroo choice of law rationale was also applied in Tucker v. Farmers Ins. Exch., 2009 MT 247, 351 M 448, 215 P3d 1 (2009). In Tidyman's Management Serv. v. Davis, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135, the Supreme Court overruled Tucker to the extent it suggested that the "materially greater interest" factors supplant the rule from Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 Mont. 281, 68 P.3d 703, when an insurance contract does not contain a choice-of-law provision.

Admissibility of Evidence From Prior Suit — Distinct Causes of Action and Different Instances of Alleged Wrongdoing: Plaintiffs sued defendant insurer for breach of contract for failing to cover medical expenses, even though coverage had been provided for similar medical costs in the past and the insurance policy remained the same. The District Court held that evidence from prior settled disputes could not be used in the present suit and granted the insurer's motion for summary judgment on grounds of res judicata and collateral estoppel. On appeal, the Supreme Court reversed. Although the medical issue was similar to the prior settled coverage, the instant action alleged wrongdoing by the insurer after the prior coverage dispute was settled and alleged a distinct cause of action arising from a different instance of alleged wrongdoing, so plaintiffs' use of evidence that was relevant in the previous dispute did not constitute relitigation of the prior dispute that would be barred by res judicata and collateral estoppel, and the District Court erred in so holding. The prior evidence was admissible to provide a context for the instant claims by revealing the history of plaintiffs' relationship with the insurer. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008). See also Berlin v. Boedecker, 268 M 444, 887 P2d 1180 (1994).

No Anticipatory Breach of Insurance Contract Given Equivocal Nature of Denial of Coverage — Summary Judgment Proper: Plaintiffs sued defendant insurer for anticipatory breach of contract when the insurer sent plaintiffs a letter initially denying coverage of plaintiffs' medical expenses.

The insurer had denied but subsequently paid plaintiffs' claims for similar costs on five previous occasions. The District Court granted summary judgment for the insurer because plaintiffs did not meet the strict criteria for establishing a claim of anticipatory breach. On appeal, the Supreme Court noted that an anticipatory breach occurs when a party repudiates a contractual duty before the contractually established time for performance has arrived, if the repudiation is absolute and unequivocal. In this case, the insurer's letter stated that plaintiffs' policy did not cover the claim but also stated that the insurer would conduct a review of the claim at plaintiffs' request. Thus, the repudiation in the letter was not absolute and unequivocal, but was instead equivocal by leaving open the possibility that plaintiffs' future claims would be honored, so the letter fell short of the unconditional type of statement required to establish a repudiation. Absent a disputed material fact regarding repudiation, summary judgment was proper and the District Court was affirmed. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008), following STC, Inc. v. Billings, 168 M 364, 543 P2d 374 (1975), and Chamberlin v. Puckett Constr., 277 M 198, 921 P2d 1237 (1996).

No Duty of Insurer to Defend for Damages Not Covered in Policy — Summary Judgment Proper: Rumph's insurance policy covered vehicle accidents resulting from garage operations. The insurer denied coverage for damages resulting from an accident in which Rumph's son drove the insured vehicle home after a party. The District Court granted summary judgment to the insurer because the accident was not incidental to garage operations and thus was not covered by the policy. The Supreme Court affirmed, holding that the insurer was not estopped from denying coverage and had no duty to defend when no reference in the complaint was made to anything remotely necessary or incidental to the garage business and that coverage unequivocally did not apply. No material facts precluded summary judgment, and because the accident was not covered, the insurer was not liable for breach of contract or unfair claims and settlement practices. Farmers Union Mut. Ins. Co. v. Rumph, 2007 MT 249, 339 M 251, 170 P3d 934 (2007), followed in Geraldine v. Mont. Municipal Ins. Authority, 2008 MT 411, 347 M 267, 198 P3d 796 (2008).

Policy Limiting Coverage to Accidents Not Applicable to Damage From Intentional Act — No Duty of Insurer to Defend: Blair was sued by his subdivision's architectural control committee for violating a residential covenant by removing and selling gravel from Blair's subdivision property. Blair sought coverage from defendant insurer. The insurer declined coverage and declined to defend Blair in the suit because the policy covered only bodily and property injuries caused by an accident, so Blair sued the insurer. The District Court granted summary judgment to the insurer, and on appeal, the Supreme Court affirmed. Although an insurer has a duty to defend an insured when a complaint alleges facts representing a risk covered by the terms of a policy, in this case Blair deliberately moved gravel on his property, which unequivocally was not an accident, so coverage under Blair's policy did not apply and the insurer had no duty to defend. Blair v. Mid-Continent Cas. Co., 2007 MT 208, 339 M 8, 167 P3d 888 (2007), distinguishing NW. Nat'l Cas. Co. v. Phalen, 182 M 448, 597 P2d 720 (1979), and Lindsay Drilling v. USF&G, 208 M 91, 676 P2d 203 (1984), and followed in Farmers Union Mut. Ins. Co. v. Rumph, 2007 MT 249, 339 M 251, 170 P3d 934 (2007). See also Safeco Ins. Co. of America v. Liss, 2000 MT 380, 303 M 519, 16 P3d 399 (2000), Staples v. Farmers Union Mut. Ins. Co., 2004 MT 108, 321 M 99, 90 P3d 381 (2004), and Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375.

Y2K Computer Problems Considered Faulty Design and Inherent Vice — Insurance Coverage Precluded by Policy Exclusions: The state filed insurance claims related to remediation of problems associated with the Y2K transition. The claims were denied, and the state sued. The District Court held that the claims were precluded from coverage by policy language that excluded coverage for damage caused by faulty design and inherent vice. On appeal, the Supreme Court affirmed. An inherent vice is an existing defect, disease, or decay or the inherent nature of a commodity that will cause it to deteriorate over time and also means a loss not covered by a policy that is not related to an extraneous cause but to a loss entirely from internal decomposition or some quality that brings about its own injury or destruction and that must be inherent in the property for which recovery is sought. The state's Y2K problem was an excluded inherent vice because the date field was an inherent problem that brought about its own problem. The faulty design and inherent vice policy exclusions were not ambiguous and clearly excluded the claimed losses. Even though the state did not receive copies of the policies, the policies were renewals of existing policies that contained identical coverage provisions and exclusions, so the state could not reasonably claim that it was unaware of the relevant policy terms and exclusions, and the insurer could rely on valid exclusions in the policy when the state had notice of the exclusions. St. v. Allendale Mut. Ins. Co., 2007 MT 83, 337 M 49, 154 P3d 1233 (2007), following Port of Seattle

v. Lexington Ins. Co., 48 P3d 334 (Wash. App. 2002), and GTE Corp. v. Allendale Mut. Ins. Co., 372 F3d 598 (3rd Cir. 2004).

No Right to Subrogation From Insurance Loss Payee — Summary Judgment Proper: The Montana Petroleum Tank Release Compensation Board reimbursed a gas station owner $254,842 for expenses incurred in an environmental remediation, and the Board then sought to exercise subrogation rights against the owner's insurer and a lessee for reimbursement. The District Court granted summary judgment to the insurer after finding that the Board had no right of subrogation through the gas station owner, and the Board appealed. The Supreme Court noted that the gas station owner was at most a loss payee under its insurance policy, so the Board had no right of subrogation through the owner or through the corporation established to run the gas station, which had no part in funding the remediation or obligation to pay for any part of the remediation. The Board could not show that the owner's insurer was unjustly enriched by failing to pay a claim that the insurer did not owe, so subrogation did not apply. Thus, the Board had no right to subrogation through either the owner or the lessee to recover damages from the owner's insurer, and summary judgment was proper. Mont. Petroleum Tank Release Comp. Bd. v. Capitol Indem. Co., 2006 MT 133, 332 M 352, 137 P3d 522 (2006), distinguishing Swingley v. Riechoff, 112 M 59, 112 P2d 1075 (1941).

Insurance Coverage for Intentional Dumping of Hazardous Waste Denied Under Policy Exclusion: For more than 3 years, defendant disposed of hazardous waste solvents into a sanitary landfill. The solvents migrated into the ground water, and neighbors sued defendant for personal injury and property damages. Defendant sought coverage from plaintiff insurer to remediate the damages and costs for the third-party suits, and the insurer eventually sought a declaration that it owed no duty to provide insurance coverage and defense costs for the environmental claims. Defendant's insurance policy contained a pollution exclusion that barred coverage for environmental damage unless the pollution was sudden or accidental. The District Court granted plaintiff summary judgment, and defendant appealed. The Supreme Court applied general rules of contract law, strictly construing the policy provisions in favor of defendant, but affirmed summary judgment absent ambiguity in the policy language. Under the policy, the initial disposal, rather than the migration and any resulting damages, had to be sudden and accidental in order to fall within the pollution exclusion clause. Defendant's routine intentional disposal of waste over a period of years could not be considered sudden or accidental, so defendant was unable to establish that the claims fell within the basic scope of coverage. Thus, plaintiff had no duty to defend defendant, and summary judgment for plaintiff was proper. Travelers Cas. & Sur. Co. v. Ribi Immunochem Research, Inc., 2005 MT 50, 326 M 174, 108 P3d 469 (2005). See also Bozeman v. AIU Ins. Co., 272 M 349, 900 P2d 929 (1995), and Makarka v. Great Am. Ins. Co, 14 P3d 964 (Alaska 2000).

Recoupment of Costs Provided for Defense of Claims Outside Insurance Policy Coverage: Plaintiff defended claims from third parties against defendant, but the claims were subsequently determined to be barred by exclusionary language in defendant's policy. Plaintiff sought to recoup the costs expended on defendant's behalf, and the District Court awarded plaintiff's costs. On appeal, the Supreme Court affirmed the award. Plaintiff timely and explicitly reserved the right to recoup the defense costs by notifying defendant of plaintiff's reservation of rights prior to paying the costs and thus expressly reserved its right to recoup defense costs if a court determined that plaintiff had no duty to provide the costs. Defendant implicitly accepted plaintiff's reserved rights by posing no objection to the reservation. Travelers Cas. & Sur. Co. v. Ribi Immunochem Research, Inc., 2005 MT 50, 326 M 174, 108 P3d 469 (2005). See also Grinnell Mut. Reins. Co. v. Shierk, 996 F. Supp. 836 (S.D. Ill. 1998), United Nat'l Ins. Co. v. SST Fitness Corp., 309 F3d 914 (6th Cir. 2002), and Horace Mann Ins. Co. v. Hanke, 2013 MT 320, 372 Mont. 350, 312 P.3d 429.

Retroactive Applicability of Decision Prohibiting Antistacking of Insurance Provisions to Pending Cases: In Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003), the Supreme Court decided that antistacking provisions in an underinsured motorist policy were unconstitutional. Plaintiffs brought a class action in federal court claiming that Hardy entitled them to additional payments from past insurance claims that were not previously allowed because their policies did not allow for stacking. The federal court certified the question to the Supreme Court as to whether Hardy applied prospectively only or retroactively to qualified claims arising before the Hardy decision. The Supreme Court agreed with the decision in Harper v. Va. Dept. of Taxation, 509 US 86 (1993), that limiting a rule of law to its prospective application creates an arbitrary distinction between litigants based merely on the timing of their claims and that in the interests of fairness and finality, the line should be drawn between claims that are final and claims that are not. The Supreme Court then decided that the retroactivity test in

Chevron Oil Co. v. Huson, 404 US 97 (1971), still applies to Montana civil decisions if all three Chevron factors are met: (1) the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed; (2) the court must weigh the merits and demerits in each case by looking at the prior history of the rule in question, its purpose and effect, and whether retroactive application will further or retard its operation; and (3) the inequity imposed by retroactive application has been weighed. However, the retroactive effect of a decision does not apply to cases that became final or that were settled prior to a decision's issuance. Thus, Hardy applies retroactively in qualifying circumstances on open claims arising before its issuance and is limited to cases pending on direct appeal or not yet final. Dempsey v. Allstate Ins. Co., 2004 MT 391, 325 M 207, 104 P3d 483 (2004). See also LaMere v. Farmers Ins. Exch., 2011 MT 272, 362 Mont. 379, 265 P.3d 617, holding that under Dempsey, a settled case is considered final.

Improper Resolution of Disputed Issues of Material Fact Once Insurer's Duty to Defend Established — Reversible Error: A driver was injured when his vehicle struck a horse and filed a claim against Staples, who was allegedly pasturing the horse just prior to the accident. Staples then filed a third-party complaint against the horse owners, claiming that as the horse's custodian, he was an additional insured under the insurance policy of one owner and was entitled to a defense. Defendant insurer unilaterally decided that its insured was not the horse's owner and sought a declaration that it had no duty to defend or provide coverage to Staples. On cross-motions for summary judgment, the District Court found that Staples might be an insured under the policy and that defendant had a duty to defend Staples, but then went on to conclude that because the policyholder did not own the horse at the time of the accident, Staples was not a third-party insured. Therefore, summary judgment was granted to the insurer. On appeal, the Supreme Court reversed. Having correctly determined that the insurer had a duty to defend, the District Court should have ended the analysis and concluded that because the insurer breached that duty, it was estopped from denying coverage and that Staples was entitled to coverage. It was error for the District Court to then proceed to resolve disputed issues of fact in ruling on the summary judgment motion in favor of the insurer. Staples v. Farmers Union Mut. Ins. Co., 2004 MT 108, 321 M 99, 90 P3d 381 (2004), following Independent Milk & Cream Co. v. Aetna Life Ins. Co., 68 M 152, 216 P 1109 (1923), Graber v. St. Farm Fire & Cas. Co., 244 M 265, 797 P2d 214 (1990), Grindheim v. Safeco Ins. Co., 908 F. Supp. 794 (D.C. Mont. 1995), Insured Titles, Inc. v. McDonald, 275 M 111, 911 P2d 209 (1996), Farmers Union Mut. Ins. Co. v. Horton, 2003 MT 79, 315 M 43, 67 P3d 285 (2003), and Lee v. USAA Cas. Ins. Co., 2004 MT 54, 320 M 174, 86 P3d 562 (2004), and followed in Farmers Union Mut. Ins. Co. v. Rumph, 2007 MT 249, 339 M 251, 170 P3d 934 (2007), and Newman v. Scottsdale Ins. Co., 2013 MT 125, 370 Mont. 133, 301 P.3d 348.

Offset Provision in Underinsured Motorist Policy Violative of State Policy — Antistacking Provisions Unconstitutional: Hardy paid separate premiums for underinsured motorist (UIM) coverage of $50,000 a person and $100,000 an accident for each of three vehicles. Hardy was injured when the vehicle that he was riding in was negligently struck by another car. Hardy recovered $50,000 from the other driver's liability insurer, but that amount was insufficient to cover Hardy's injuries, so Hardy sought compensation pursuant to the UIM coverage on his vehicles. Hardy believed that the policies could be stacked to aggregate $150,000 of UIM coverage. Defendant insurance company denied coverage, and Hardy sued in federal District Court. The insurer raised three arguments in its defense, contending that: (1) the tortfeasor's vehicle was not underinsured, as defined in the policy, because the total liability coverage for the tortfeasor's vehicle was equal to the highest single UIM coverage limit in Hardy's policy; (2) the policy required Hardy's UIM coverage for one vehicle to be offset by all amounts recovered from the tortfeasor; and (3) Hardy's UIM coverages could not be stacked or aggregated for purposes of either comparing limits or affording $150,000 of UIM coverage. The federal District Court certified the three questions to the Montana Supreme Court, which determined that the UIM definition and offset clause in Hardy's policy violated Hardy's reasonable expectation of coverage when a tortfeasor's insurance provided inadequate indemnity. The policy declarations page suggested coverage in an amount that was actually not available; therefore, the terms of the UIM coverage were ambiguous in violation of Montana public policy and rendered the coverage that the insurer promised to provide illusory. Further, the provisions of 33-23-203 that allow insurers to charge premiums for nonexistent coverage are not rationally related to the objective of maintaining affordable insurance in Montana and constitute an arbitrary and capricious legislative action that is unconstitutionally violative of due process. A Montanan should reasonably expect coverage up to the aggregate limits of separate policies when a separate premium for UIM coverage was charged for each policy. Antistacking provisions that allow an insurer to receive valuable consideration for coverage that is not provided are against public policy. Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003), followed in Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003), and distinguished in Parish v. Morris, 2012 MT 116, 365 Mont. 171, 278 P.3d 1015. The Hardy decision was applied retroactively to open claims arising before its issuance and was limited to cases pending on direct appeal or not yet final in Dempsey v. Allstate Ins. Co., 2004 MT 391, 325 M 207, 104 P3d 483 (2004), which was followed in LaMere v. Farmers Ins. Exch., 2011 MT 272, 362 Mont. 379, 265 P.3d 617, holding that under Dempsey, a settled case is considered final. See also Chaffee v. USF&G Co., 181 M 1, 591 P2d 1102 (1979), and Bennett v. St. Farm Mut. Auto. Ins. Co., 261 M 386, 862 P2d 1146 (1993).

Wendell Test Applied to Determination of Whether Bodily Injury Caused by Accident "Resulting From the Use" of Insured Vehicle: Defendant's son was injured in a hunting accident after riding to the hunt in a vehicle owned by Wajahuski and insured by plaintiff. The insurance policy provided for coverage resulting from the use of a vehicle. The District Court applied the test in Wendell v. St. Farm Mut. Auto. Ins. Co., 1999 MT 17, 293 M 140, 974 P2d 623 (1999), and held that the automobile insurance policy did not provide liability coverage with respect to defendant's claims for bodily injury. Defendant appealed. The Supreme Court affirmed. Even though the Wendell test was originally applied in an uninsured motorist case, the expansive, fact-intensive test also applied here. The phrase "resulting from the use" was ambiguous, so the contract terms were construed in a light most favorable to the insured or other beneficiary. The accident could have occurred in any location, regardless of how the hunters reached their destination. The fact that that particular vehicle was used to transport the hunters and assist in the hunt provided no connection between the use of the vehicle and the hunting accident. Thus, the District Court did not err in holding that the personal injuries were not caused by an accident resulting from the use of the insured motor vehicle. St. Farm Mut. Auto. Ins. Co. v. Ferrin, 2002 MT 196, 311 M 155, 54 P3d 21 (2002).

No Duty of Care Absent Relationship Between Plaintiff and Insurance Agent: Seal sold saddles and tack to Hart. Hart was to procure insurance on the goods to protect against casualty loss and theft, so Hart contracted with a South Dakota insurance agent for property insurance. Seal was not named in the policy as a loss payee. The goods were subsequently stolen, but the insurer refused to pay on grounds that Hart was not a common carrier and, as owner of the property, was not hauling the property of another. Seal sued the insurance agent for breach of contract and failure to procure insurance on Seal's behalf. The District Court concluded that Seal did not contract with the agent to insure any person, property, or risk in Montana, so no relationship existed between the parties to establish a duty on the agent's behalf to procure insurance for Seal. The Supreme Court affirmed. The question of duty is a problem of the relationship between individuals that imposes upon one a legal obligation for the benefit of the other. Here, the only conversations regarding the procurement of insurance occurred between Hart and the agent. Seal never contacted the agent, so no relationship existed between Seal and the agent that gave rise to a corresponding duty to allow Seal to recover on the claim. The certificate of insurance alone did not constitute a contract to procure insurance or impose a duty on the certificate issuer to procure insurance. Seal v. Hart, 2002 MT 149, 310 M 307, 50 P3d 522 (2002). See also Lu-An-Do, Inc. v. Kloots, 721 NE 2d 507 (Ohio Ct. App. 1999).

"Other Insurance" Clause Upheld to Deny Unjust Enrichment: Summers purchased a homeowner's policy from American and 2 years later purchased an additional policy from National without canceling his first policy. The home was subsequently burned, and Summers filed a claim with American. When American learned of the policy with National, National filed an interpleader action with the District Court and deposited its policy limit of $77,000, to which both American and Summers claimed entitlement. The American policy contained explicit language that the policy terminated upon the purchase of the subsequent policy by Summers. Relying on the public policy enunciated in automobile insurance stacking cases, Summers argued that the "other insurance" clause in American's policy was void as a matter of public policy. See Bennett v. St. Farm Mut. Auto. Ins. Co., 261 M 386, 862 P2d 1146 (1993). The Supreme Court disagreed, holding that stacking automobile policies was allowed in order to ensure that victims receive adequate compensation but that in the case before it, Summers could not demonstrate that the compensation received from National did not fully cover his loss and therefore American did not have to pay the homeowner a second time for the loss and was only liable to Summers for the premiums collected after Summers obtained the National policy. The Supreme Court also disagreed with Summer's claim that pursuant to 33-24-102, the actual value of the property could not be ascertained and therefore the coverage of both policies should be taken

as conclusively showing the value of the property. The Supreme Court stated that because it had already found that American's policy terminated automatically under the "other insurance" clause, when Summers purchased the second policy, 33-24-102 was inapplicable. Nat'l. Cas. Co. v. Am. Bankers Ins. Co. of Fla., 2001 MT 28, 304 M 163, 19 P3d 223, (2001).

Requirement That Attorney Submit Detailed Descriptions of Services Violative of Client Confidentiality: When presented with the question of whether an attorney licensed to practice in Montana or admitted pro hac vice may be required by an insurer's billing and practice rules to submit detailed descriptions of professional services to outside persons or entities, such as third-party insurance auditors, without first obtaining the informed consent of the client, insurers cited U.S. v. Mass. Institute of Technology, 129 F3d 681 (1st Cir. 1997), in claiming that as agents of insurers, third-party auditors are part of a privileged community or magic circle within which confidential information may be shared without waiver of attorney-client privilege or work product doctrine. The insurers also cited Indian Law Resource Center v. Dept. of Interior, 477 F. Supp. 144 (D. D.C. 1979), for the proposition that an auditor is a confidential agent of a privileged party, so disclosure of attorney fee information did not waive any privilege. The Supreme Court found neither case persuasive, concluding that third-party auditors are not confidential agents of insureds, but function rather as agents of insurers, and thus are not within the magic circle of confidentiality. Rather, disclosure of detailed billing statements to third-party auditors constitutes disclosure to a potential adversary because there is always the possibility of disputes between auditors and defense counsel and their clients that could result in litigation. As possible adversaries, auditors stand in potential conflict with the interests of insureds in competent representation by defense counsel who exercise their independent professional judgment. The court looked to Rule 1.6 of the Rules of Professional Conduct, which extends to all communications between insureds and defense counsel, making it broader in both scope and protection than the attorney-client privilege and the work product doctrine. Although disclosures of billing information to insurers are permissible because insurers are impliedly authorized to carry out representation, disclosure to third-party auditors is not impliedly authorized. The court also rejected the insurers' argument that insureds' consent by contract to disclosure of billing statements comports with Rule 1.6. An insured executing a liability policy with an insurer cannot know at that time what kind of claim will be brought against that insured, what the issues will be, what kind of services will be undertaken by defense counsel, or the legal consequences that might result from the disclosure of billing information to a third-party auditor. Under Rule 1.6, for an insured to make a fully informed consent to disclosure of detailed billing statements, the consent must be contemporaneous with the facts and circumstances of which the insured should be aware. Thus, disclosure by defense counsel of detailed descriptions of professional services to third-party auditors without first obtaining the informed consent of the insured violates confidentiality under the Rules of Professional Conduct. In re Rules of Professional Conduct & Insurer Imposed Billing Rules & Procedures, 2000 MT 110, 299 M 321, 2 P3d 806, 57 St. Rep. 433 (2000), distinguishing U.S. v. Schwimmer, 892 F2d 237 (2nd Cir. 1989).

Failure to Effectuate Insurance Settlement in Good Faith as Independent Cause of Action: Under 33-18-201, an insurer is required to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. A violation of this provision gives rise to an independent cause of action under 33-18-242. Because the continuing duty of good faith is not ended by commencement of a lawsuit by an insured, that duty can be breached by an insurer's postfiling conduct, including the actions of attorneys conducting the insurer's defense. Amendment of the claim to include an action under 33-18-242 related back to the original claim and was properly allowed. Further, third-party defendant's alleged failure to conduct a reasonable investigation and its subsequent refusal to pay the claim, although occurring more than 2 years before commencement of plaintiff's cause of action, were, if proved, ostensibly part of the bad faith postjudgment conduct. Thus, the evidence of those acts was not time-barred. Federated Mut. Ins. Co. v. Anderson, 1999 MT 288, 297 M 33, 991 P2d 915, 56 St. Rep. 1152 (1999), following Safeco Ins. Co. v. Ellinghouse, 223 M 239, 725 P2d 217, 43 St. Rep. 1689 (1986), and Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993).

Insured Entitled to Recover Attorney Fees, Costs, and Interest, Including Prejudgment Interest, Before Insurer May Recover Pursuant to Subrogation Rights: Park Plaza Hotel suffered extensive property damage when a train wrecked in subzero weather, causing a power outage during which the hotel's pipes burst. The hotel's insurer paid the hotel the limits of its policy, and the hotel sued the railroad for damages in excess of the policy limits. The insurer joined in the suit. The hotel cross-claimed against its insurer for attorney fees and costs expended in recovering its excess damages from the railroad. The Supreme Court affirmed the lower court and held that the insured must recover all that it has lost, including attorney fees and costs expended in an attempt to recover sums over and above those received under its policy with the insurer, before the insurer may recover pursuant to its subrogation rights. The Supreme Court also held that the insurer was obligated to pay any prejudgment interest to which the lower court determined the insured was entitled. DeTienne Associates Ltd. Partnership v. Farmers Union Mut. Ins. Co., 266 M 184, 879 P2d 704, 51 St. Rep. 730 (1994), following and clarifying Skauge v. Mtn. St. Tel. & Tel. Co., 172 M 521, 565 P2d 628 (1977).

Agreement to Defend Until Investigation Shows No Covered Risk Involved: An insurance company with no contractual duty to defend as to certain claims against insured agreed to defend the whole case unless and until its investigation showed that the case had reached the point at which there were no claims that insurer had a duty to defend. Insurer refused to defend plaintiff's appeal because the sole issue as to which there was a duty to defend had been resolved in favor of insured and was not appealed. In insured's later case against insurer for failure to defend the appeal, there was no evidence from which the lower court could conclude that there had been no investigation by insurer. Therefore, the lower court could not rule that there had not been an investigation and grant insured a verdict on that basis. Furthermore, insurer's attorney had prepared for, participated in, and successfully defended the case in the lower court and was completely familiar with all the facts by the time of the lower court verdict. There was no further investigation that could be required. Reason compelled the conclusion that insurer had carried out an investigation on the matter. Bozeman v. AIU Ins. Co., 262 M 370, 865 P2d 268, 50 St. Rep. 1605 (1993).

Duty to Defend on Appeal When No Covered Risk Appealed: An insurance policy providing that insurer would defend insured for conduct, including defamation, covered by the policy did not require insurer to defend on appeal after a defamation claim was resolved in insured's favor in the lower court. Issues on appeal by plaintiff did not relate to conduct covered by the policy, and the defamation verdict in insured's favor was not appealed. The verdict for insured was reversed and remanded for retrial. On retrial, plaintiff again claimed defamation. The retrial could not be used to find that insurer should have defended the first appeal on the basis that the city had, after the first verdict and during the first appeal, continued to risk liability for defamation. Bozeman v. AIU Ins. Co., 262 M 370, 865 P2d 268, 50 St. Rep. 1605 (1993).

Jurisdiction Over Nonresident Defendant Based Upon Conduct and Not Subrogation Pursuant to Contract — Exercise of Long-Arm Jurisdiction Reasonable: St. Paul's insured, Lynn, and Allstate's insured, Glassing, were involved in a car accident. After judgment against Glassing, St. Paul paid Lynn pursuant to the underinsured motorist provision of its policy and then sought recovery against Glassing based on a right of subrogation. The Supreme Court held that jurisdiction of Glassing was not based upon a provision of the insurance contract but upon subrogation as a matter of law and upon the tortious conduct of Glassing in Montana. The Supreme Court held that under the facts of the case, it was reasonable for the District Court to exercise personal jurisdiction over Glassing even though he resided in Minnesota and reversed the District Court's dismissal for lack of jurisdiction. St. Paul Fire & Marine Ins. Co. v. Allstate Ins. Co., 257 M 47, 847 P2d 705, 50 St. Rep. 154 (1993).

Complaint Alleging Events Not Within Policy Coverage — No Duty to Defend: As set out in Atcheson v. Safeco, 165 M 239, 527 P2d 549 (1974), the general rule is that an insurer has a duty to defend when a complaint filed against its insured sets forth facts that bring an event within the policy provisions. However, when the complaint alleges events not within the coverage of the policy and the insurer would not be obligated to indemnify the insured if the complaining party recovered, then the insurer has no duty to defend. Graber v. St. Farm Fire & Cas. Co., 244 M 265, 797 P2d 214, 47 St. Rep. 1595 (1990), followed in Brabeck v. Employers Mut. Cas. Co., 2000 MT 373, 303 M 468, 16 P3d 355, 57 St. Rep. 1596 (2000), and Generali-U.S. Branch v. Alexander, 2004 MT 81, 320 M 450, 87 P3d 1000 (2004).

Injury to Tangible Property Required Before Economic Loss Covered — Plagiarism: After arriving at a settlement agreement based on a charge of plagiarism, an insured sought recovery from his insurance company under a business policy that provided that the company would "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, property damage or personal injury caused by an occurrence to which the insurance applies". When the insurer refused to pay, the District Court properly granted summary judgment to the company because the charges of plagiarism did not allege direct physical injury to tangible property, but alleged only economic loss. The longstanding rule in Montana is that in order for economic losses to be covered by insurance, a direct physical injury to tangible property must occur. Graber v. St. Farm Fire & Cas. Co., 244 M 265, 797 P2d 214, 47 St. Rep. 1595 (1990).

Ambiguous Insurance Policy Provision — Summary Judgment Reversed: An insurance policy that did not clearly state whether it provided uninsured motor vehicle coverage when the driver was insured but the ownership of the vehicle was not was held to be ambiguous; therefore, under the rationale that an ambiguous provision is construed against the insurance company, the policy was interpreted to provide coverage. The District Court grant of summary judgment holding that the policy did not provide uninsured motor vehicle coverage was reversed. St. Farm Mut. Auto. Ins. Co. v. Taylor, 223 M 215, 725 P2d 821, 43 St. Rep. 1667 (1986).

Invalidity of No-Consent-to-Settlement Clause: A no-consent-to-settlement clause in an insurance policy, disallowing coverage if the insured settled with any person or organization who may have been liable for the bodily injury without obtaining written consent of the insurance company, was held to be void because enforcement of the clause would result in a backing away from the mandatory offering requirement of 33-23-201 and would place control of efforts to collect from the responsible party in the hands of the insurer. While not denying the insurer's right to subrogation, the court would not allow the right to subrogation to negate the required offering of uninsured motor vehicle coverage. St. Farm Mut. Auto. Ins. Co. v. Taylor, 223 M 215, 725 P2d 821, 43 St. Rep. 1667 (1986).

Construction of "Occurrence" Policies: The accident upon which a negligence claim was based occurred when the manufacturer of the garage door involved in the injury was insured by Western. When this lawsuit was filed, the manufacturer had been acquired through a merger by another company. The second company was insured by Travelers. Each of the policies involved was an "occurrence" policy. Thus Western, the only company insuring the manufacturer at the time of the injury, is the only company obligated to pay any claim arising from the accident. Travelers Ins. Co. v. W. Fire Ins. Co., 218 M 452, 709 P2d 639, 42 St. Rep. 1735 (1985).

Primary Insurance Company Solely Responsible for Liability: While making a delivery for his employer, Roach and Smith Distributors, Guiberson parked a delivery truck outside the Warm Springs store, leaving the keys in the ignition. Tintinger, a patient at Warm Springs state hospital, and another patient got in the truck and began to drive it away. Guiberson jumped in the truck and unsuccessfully attempted to persuade Tintinger to stop the truck. Eventually the truck overturned and Guiberson was injured. Guiberson sued Hartford Casualty Insurance, his personal insurer, under an uninsured motorist provision. Hartford joined, as third-party defendants, State Farm, Roach and Smith Distributors' insurer, and the state of Montana. State Farm's policy also contained uninsured motorist coverage. The jury returned a verdict in favor of Guiberson for $600,000, finding Tintinger and the state equally responsible for Guiberson's injuries. Based on the insurance policies, the court apportioned Tintinger's portion of the judgment between Hartford and State Farm. The Supreme Court reversed, ruling that the insurance policies indicated that Hartford contracted to be an excess insurer only, that State Farm was a primary insurer, and that under a "stacking" approach (now abolished, 33-23-203) State Farm's insurance adequately covered Tintinger's liability. Guiberson v. Hartford Cas. Ins. Co., 217 M 279, 704 P2d 68, 42 St. Rep. 1196 (1985). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

No Liability Coverage for Expected or Intentional Damage: The insurer issued a manufacturers' and contractors' liability policy to insured, a volunteer fire company. The insured made the purposeful decision to cease fighting a residential fire because the dwelling owners were not members of the fire company. The insured sought coverage under the policy as to damages claimed by the dwelling owners when their home was destroyed by the fire. The insured's decision to stop fighting the fire was intentional, and the resulting harm was predictable. Therefore, the insured was not covered under the policy, which included coverage for an "occurrence", meaning an accident that causes damage neither expected nor intended. USF&G v. Rae Volunteer Fire Co., 212 M 450, 688 P2d 1246, 41 St. Rep. 1857 (1984), followed in Burns v. Underwriters Adjusting Co., 234 M 508, 765 P2d 712, 45 St. Rep. 2089 (1988), distinguishing NW. Nat'l Cas. Co. v. Phalen, 182 M 448, 597 P2d 720 (1979). See also Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375.

Action to Be Dismissed Upon Death of Either Spouse During Pendency of Dissolution Proceeding — ". . . until death do you part": One spouse in a dissolution action died shortly after a hearing was held on his petition for dissolution of marriage, but no judgment had yet been entered, either written or oral. In affirming the District Court in dismissing the petition, the Supreme Court held that death terminates a marriage as a matter of law; therefore, there is nothing for the court to dissolve. The death of either spouse during the pendency of a dissolution action prior to the entry of judgment divests the court of all jurisdiction over the action, including matters involving the distribution of property. In re Marriage of Lawrence, 212 M 327, 687 P2d 1026, 41 St. Rep. 1771 (1984).

Ambiguity — Casualty Coverage of Occurrence After Policy Cancellation: A propane heater in a pickup-mounted camper exploded in 1980 killing the occupant, who had purchased the camper in 1976. The seller of the camper had insurance coverage for such an occurrence at the time of the sale, but such coverage was canceled prior to the time of the explosion. The Supreme Court held that although the insurance contract could have limited coverage, there was ambiguous language in this contract which must be resolved in favor of the insured, and thus there was coverage in this case for a product sold during the term of coverage although the product caused injury after the policy had expired. Truck Ins. Exch. v. Woldstad, 212 M 418, 687 P2d 1022, 41 St. Rep. 1750 (1984), distinguished in Murphy v. St., 248 M 82, 809 P2d 16, 48 St. Rep. 335 (1991).

CONSTRUCTION

No Duty to Defend Against Slander Claim When Claim in Underlying Lawsuit Undated — Not Alleged to Have Been Committed During Insurance Policy Periods. Farmers Ins. Exch. v. Minemyer, 2023 MT 138, 413 Mont. 60, 532 P.3d 837.

Earth Movement Exclusion — Commercial General Liability Policy — Coverage for Homeowner's Claims Reversed — Policy Clearly and Unambiguously Excluded Coverage — Reasonable Expectations Doctrine Not Applicable. Loendorf v. Employers Mut. Cas. Co., 2022 MT 143, 409 Mont. 248, 513 P.3d 1268.

Technical Violation of Property and Casualty Insurance Policy Language Simplification Act May Not Be Used to Invalidate Unambiguous Policy Exclusions — Impermissible Increase of Risk Assumed. High Country Paving, Inc. v. United Fire & Cas. Co., 2022 MT 72, 408 Mont. 202, 507 P.3d 1165.

Underinsured Motorist Coverage Conditioned on Being Otherwise Covered by Insurance Provider — Coverage for Motorcycles Not Offered by Insurance Provider — Unattainable Condition Precedent Violative of Public Policy — Denial of Medical Payment Coverage Under Contract Conditions Proper: A plaintiff was involved in a vehicle collision while riding his motorcycle. The plaintiff insured his vehicles through USAA, including underinsured motorist coverage and medical payment coverage. Because USAA did not provide motorcycle coverage in Montana, the plaintiff's motorcycle was insured through another provider, but the coverage did not include underinsured motorist or medical payment coverage. The language of the plaintiff's USAA policy covered underinsured motorist coverage for the plaintiff, but the policy explicitly excluded any of the plaintiff's vehicles that were not insured with USAA. Despite providing coverage if the plaintiff had been riding a motorcycle owned by another person, the policy did not cover the plaintiff's motorcycle. Because the exclusion of coverage was an unattainable condition precedent, it violated public policy, and the Supreme Court reversed the District Court's summary judgment in USAA's favor. Unlike the underinsured motorcyclist coverage, the medical payment coverage policy specified the categories of noncovered vehicles included in the coverage. Because motorcycle use did not satisfy the policy's enumerated coverage instances and because public policy was not violated by a denial of coverage in which the compensation has not been paid for the coverage, even if personal and portable, the District Court did not err by entering summary judgment in favor of USAA regarding the medical payment coverage. Goss v. USAA Cas. Ins. Co., 2021 MT 289, 406 Mont. 215, 498 P.3d 187.

Corporate Insurance Policy Restriction on Class of Insureds — No Violation of Reasonable Expectations Doctrine: The plaintiff insured, a Hutterite colony, sued its insurer after the insurer denied a claim the plaintiff submitted on behalf of two members of the colony who were injured in an accident in a vehicle owned by a third party. The insurer denied the claim on the basis that the two members did not meet the definition of an insured, which the corporate insurance policy restricted to individuals occupying covered vehicles. The District Court granted summary judgment to the insurer, concluding that the colony members did not constitute insureds under the insurance policy and that it was not a violation of the plaintiff's reasonable expectations for the corporate insurance policy to restrict the class of insureds. On appeal, the Supreme Court affirmed, holding that the colony members did not meet the definition of an insured under the policy because they were not occupying a covered vehicle at the time of the accident. Because they would have qualified for coverage had they been occupying a colony-covered vehicle at the time of the accident, the policy was not illusory and the restriction did not violate the plaintiff's reasonable expectations. Kilby Butte Colony, Inc. v. St. Farm Mut. Auto. Ins. Co., 2017 MT 246, 389 Mont. 48, 403 P.3d 664.

Policy Limiting Coverage to Accidents May Include Intentional Acts — Summary Judgment Improper — Remanded to Determine Whether Damages Were Not Objectively Intended or Expected: The plaintiff insurer defended the defendant insured in a negligence case under a reservation of rights and initiated a declaratory action to determine whether the policy provided coverage for the claim under which it had a duty to indemnify the insured. At issue in the declaratory action was the interpretation of the term "occurrence" and, correspondingly, its common policy definition as an "accident," and whether an intentional act could be considered an "accident" for purposes of insurance coverage. The Supreme Court held that the policy language defining "accidents" may have included intentional acts if the damages were not objectively intended or expected by the insured. Given the testimony, the Supreme Court determined there were issues of material fact that precluded summary judgment and that further proceedings were necessary to resolve factual issues related to application of the coverage provisions of the policy. Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375, distinguished in Huckins v. United Servs. Auto. Ass'n, 2017 MT 143, 387 Mont. 514, 396 P.3d 121. See also Blair v. Mid-Continent Cas. Co., 2007 MT 208, 339 Mont. 8, 167 P.3d 888, Millers Mut. Ins. Co. v. Strainer, 204 Mont. 162, 663 P.2d 338 (1983), and NW. Nat'l Cas. Co. v. Phalen, 182 Mont. 448, 597 P.2d 720 (1979).

Qualification of Vehicle as Temporary Substitute — Use of Vehicle Determinative: The plaintiff, who worked as a cook for an outfitting company, was injured at camp when her personal truck, which was attached to the trailer in which she was sleeping, was stolen. In the days preceding the accident, the truck had been used to transport clients and their luggage to camp because the company's vehicle, a Suburban, that usually hauled clients and luggage was being repaired. The plaintiff claimed that she was entitled to uninsured motorist coverage under her employer's policy on the Suburban because her truck was being used as a "temporary substitute vehicle". The insurer refused coverage, countering that her truck could not be considered a "temporary substitute vehicle" because the plaintiff would have still been driving her truck even if the Suburban had been available. After the District Court granted the insurer summary judgment, the plaintiff appealed. In a matter of first impression, the Supreme Court clarified that the proper test for what constitutes a temporary substitute vehicle is the use to which it is put. Given that the undisputed facts showed that the plaintiff had used her truck to do the work the Suburban would have done had it not been in the shop for repairs, she was entitled to coverage. Accordingly, the Supreme Court reversed the order granting summary judgment and directed the District Court to enter judgment in favor of the plaintiff. Stonehocker v. Gulf. Ins. Co., 2016 MT 78, 383 Mont. 140, 368 P.3d 1187.

Injured Neither Named Insured Nor Occupant of Covered Vehicle at Time of Accident — No Coverage Under Commercial Policy: The defendants' daughter was injured when she was riding a bicycle out of state. The defendants owned a business that had a commercial policy for its fleet of company vehicles; however, the daughter was neither an employee of the business nor occupying a company vehicle at the time of the accident. The defendants sought benefits from the commercial policy on their daughter's behalf. The plaintiff insurance company sought declaratory judgment that the policy did not cover the daughter for her injuries. The District Court granted summary judgment in favor of the plaintiff and the defendants appealed. The Supreme Court affirmed, agreeing that because the daughter was not a named insured or occupying a car covered by the policy at the time of the accident, the plaintiff was entitled to judgment as a matter of law. Am. St. Ins. Co. v. Flathead Janitorial & Rug Services Inc., 2015 MT 239, 380 Mont. 308, 355 P.3d 735.

Deterioration Leading to Fire Not "Occurrence" Under Policy: The defendant installed a faulty water heater that caused a fire in a restaurant, and the restaurant sought indemnification from the defendant. At the time of the installation, the defendant was covered by a commercial general liability policy; however, the policy had expired by the time the fire occurred, 3 years later. The defendant's insurance carrier, the plaintiff, denied coverage and filed a petition for declaratory relief. The plaintiff argued that the damage to property had occurred after the policy had lapsed. The defendant argued that the deterioration of the heater that ultimately caused the fire was "property damage" under the policy and occurred at the time the policy was in effect. The District Court granted summary judgment to the plaintiff, holding that deterioration of the water heater was not "property damage" under the policy. On appeal, the Supreme Court affirmed, agreeing that because no property damage had occurred during the policy, no "occurrence" triggering coverage had occurred. Truck Ins. Exchange v. O'Mailia, 2015 MT 42, 378 Mont. 231, 343 P.3d 1183.

Insurance Recovery — Prejudgment Interest Not Allowed Until Appraisal — Postjudgment Interest Allowed After Appraisal: After a building fire, the property owner pursued recovery in District Court against the insurer of the building and was awarded replacement costs and prejudgment interest beginning from the date of the loss. On appeal, the Supreme Court reversed the District Court's recovery calculation by lowering the judgment amount and remanded the case for the purpose of calculating postjudgment interest, but not prejudgment interest. The court reasoned that prejudgment interest was not appropriate, as the damages could not be made certain until an appraiser made adjustments for portions of the building that were slated for demolition before the fire. Lincoln County Port Authority v. Allianz Global Risks US Ins. Co., 2013 MT 365, 373 Mont. 60, 315 P.3d 934.

Family Member Exclusion Not Unconscionable — Summary Judgment Reversed: A wife was injured in a car accident as a result of her husband's negligent driving. Because the husband's umbrella policy contained an express family member exclusion, the insurer denied coverage for her injuries. The couple sought a declaratory judgment that the wife was entitled to coverage. They argued that the exclusion was unenforceable because it was ambiguous, violated public policy and the reasonable expectations of the insured, and was unconscionable. The District Court granted summary judgment to the plaintiffs based on its conclusion that the exclusion was unconscionable. On appeal, the Supreme Court reversed, reasoning that the family member exclusion allows broad coverage at an economical cost and therefore did not unreasonably favor the insurer. Fisher v. St. Farm Mut. Auto. Ins. Co., 2013 MT 208, 371 Mont. 147, 305 P.3d 861, followed in Meadow Brook, LLP v. First Am. Title Ins. Co., 2014 MT 190, 375 Mont. 509, 329 P.3d 608.

"Each Person" Limit Covers Direct and Derivative Damages for Loss of Father — District Court Reversed and Remanded: Heath and Vail and their 3-month-old daughter were injured in an automobile accident. Heath died of his injuries and his father (Frank) sued to recover damages on behalf of Heath's estate and his granddaughter who suffered bodily injury in the accident. The defendant insurer paid Heath's estate $50,000 under the policy's "each accident" limit. The insurer also paid Heath's estate the "each person" policy limit of $50,000 and paid the medical expenses of the daughter. Frank sought additional wrongful death and survivorship benefits for the daughter to be paid out of the policy's $50,000 "each person" limit. The insurer refused and the District Court awarded partial summary judgment to the insurer. The Supreme Court reversed and remanded. The language of the policy defining bodily injury applied to those persons who did not sustain bodily injury. The daughter sustained bodily injury; thus, the policy was interpreted to mean that the "each accident" limit of $100,000 was available and the "each person" limitation of $50,000 applied separately to Heath's claim and to the daughter's claim. St. Farm Mut. Auto. Ins. Co. v. Freyer, 2010 MT 191, 357 Mont. 329, 239 P.3d 143, following Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 Mont. 281, 68 P.3d 703, and distinguishing Allstate v. Wagner-Ellsworth, 2008 MT 240, 344 Mont. 445, 188 P.3d 1042.

Clause in Insurance Policy Excluding Policyholder Vehicles From Underinsured Motor Vehicle Coverage Valid: Summary judgment was proper because the plain language of the insurance policy clearly and unambiguously excluded the insured's vehicles from the definition of an underinsured motor vehicle. In addition, the insurance policy did not violate public policy because it did not create illusory underinsured motor vehicle coverage. The exclusion set out in the policy denied coverage only in the case of a single-car accident in which the only vehicle in the accident was owned by the insured. Monroe v. Cogswell Agency, 2010 MT 134, 356 Mont. 417, 234 P.3d 79.

Jockeys Not Included in Definition of Exhibitors for Purposes of Insurance Against Racing Injuries: Jockeys who suffered injuries in horseraces at MetraPark in Billings sued the county and the association that leased the facility for the races. The insurance policy listed numerous exclusions, including bodily injuries suffered by special event participants and by athletic or sports participants. The insurer cited the exclusions, denied coverage for the jockey's injuries, and refused to defend or indemnify the county and the association. The jockeys eventually settled with the county and the association and then sought to recover from the insurer. The District Court held that the policy was unambiguous, that the exclusions did not violate public policy, that the county and the association had no reasonable expectation that the policy would cover jockeys, and that summary judgment for the jockeys was therefore inappropriate. The jockeys appealed, but the Supreme Court affirmed. As used in 23-4-205, the term "exhibitors" means people who organize a horserace, not jockeys who are participants in the exhibition, so the claim that the exclusions violated public policy was correctly dismissed. The county's and association's expectations that the policy would cover jockeys was not objectively reasonable because the athletic or sports exclusion unambiguously excluded coverage for jockeys, and the District Court did not err in excluding the jockeys' claims. Giacomelli v. Scottsdale Ins. Co., 2009 MT 418, 354 M 15, 221 P3d 666 (2009).

Additional Insured Endorsement in Primary Policy — Duty to Defend: An employee of a subcontractor was injured while installing fireproofing in a building. The general contractor's liability insurer (defendant insurer) tendered a defense to the subcontractor under the indemnity clause in the subcontract and to the general contractor's insurer (plaintiff insurer) under the commercial general liability policy, so the question arose whether plaintiff insurer had a duty to defend pursuant to the commercial liability under which the general contractor qualified as an additional insured. Plaintiff insurer argued that because the general contractor could not shift responsibility to the subcontractor for the general contractor's statutory duty to maintain general job site safety, plaintiff insurer had no duty to defend or cover the loss. The District Court disagreed and granted summary judgment to defendant insurer pursuant to the additional insured endorsement. Plaintiff insurer appealed, but the Supreme Court affirmed. The court examined the indemnity provision in the subcontract and determined that the indemnity provision was not sufficiently clear and unequivocal in its intent to indemnify the general contractor for its own negligence, so the court then turned to the language of the additional insured endorsement. The general contractor was clearly named as an additional insured on a primary noncontributing basis, so plaintiff insurer's policy was clearly intended to be primary. Because plaintiff insurer had a duty to defend the general contractor, the District Court did not err in granting defendant insurer's motion for summary judgment and holding that plaintiff insurer breached its duty to defend. United Nat'l Ins. Co. v. St. Paul Fire & Marine Ins. Co., 2009 MT 269, 352 M 105, 214 P3d 1260 (2009), following Slater v. Cent. Plumbing & Heating Co., 275 M 266, 912 P2d 780, 53 St. Rep. 132 (1996). See also Staples v. Farmers Union Mut. Ins. Co., 2004 MT 108, 321 M 99, 90 P3d 381 (2004), and Newman v. Scottsdale Ins. Co., 2013 MT 125, 370 Mont. 133, 301 P.3d 348.

No Duty of Insurer to Defend or Indemnify Contractor Protected From Liability: An employee of a subcontractor sued plaintiff for negligence, but plaintiff's insurers and the contractor's insurer refused to defend and indemnify against the claim. The District Court granted summary judgment to the contractor's insurer, and the employee appealed. The Supreme Court affirmed. The contractor was protected from liability under 39-71-411. Because the contractor was not sued for its own negligence or found liable for any tortious conduct, its insurer had no duty to defend or indemnify plaintiff under the insurance policy or its endorsements. Plum Creek Marketing, Inc. v. Am. Economy Ins. Co., 2009 MT 264, 352 M 56, 214 P3d 1238 (2009), followed in F.H. Stoltze Land & Lumber Co. v. Am. States Ins. Co., 2015 MT 165, 379 Mont. 409, 352 P.3d 612.

No Breach of Duty to Defend When Claim Excluded Under Policy's Breach of Contract Provision: Plaintiff town entered a contract with a drilling company. The mayor allegedly instructed the company to perform work beyond the scope of the contract and said the town would pay for the work. When the town refused to pay, the company sued for breach of contract. The town then contacted defendant insurer, requesting a defense and indemnification, but the insurer refused coverage. The District Court held that the insurer did not have a duty to defend or indemnify. On appeal, the Supreme Court affirmed. The policy contained exclusions for nonmonetary damages, punitive damages, breach of contract, and liability based on estimated probable costs or faulty bid specifications. The complaint against the town alleged breach of contract, negligent misrepresentation, and constructive fraud. Despite the town's assertion that legal theories and conclusory language in the complaint formed the basis for coverage, the basis for coverage is the acts giving rise to the complaint, and in this case the actions of the mayor were all grounded in contract and thus fell within the policy exclusions, so the insurer had no duty to defend. Additionally, the company's constructive fraud complaint failed to state fraudulent circumstances with particularity and thus was inadequately pleaded, so the insurer had no duty to defend the claim. Geraldine v. Mont. Municipal Ins. Authority, 2008 MT 411, 347 M 267, 198 P3d 796 (2008).

Insurance Contract Choice of Law Provision — Montana Law Incorrectly Applied to Nevada Policy: The District Court conducted a conflict of law analysis and concluded that Montana law governed Tenas's entitlement to damages for an accident that occurred in Montana under a personal auto policy that Tenas's mother obtained in Nevada. On appeal, the Supreme Court reversed. Nevada was determined to have a materially greater interest than Montana based on the fact that: (1) Nevada was the place of contracting; (2) although Montana represented a place of performance under the policy, place of performance weighed heavily toward Nevada because Tenas and her mother were mere visitors to Montana; (3) Tenas and her mother resided in Nevada, so that state had a greater interest regarding domicile, residence, nationality, place of incorporation, and place of business of the parties; and (4) a policy choice of law provision required application of Nevada law to resolve any disputes. Given Nevada's greater interest, the District Court improperly applied Montana law to the dispute. Tenas v. Progressive Preferred Ins. Co., 2008 MT 393, 347 M 133, 197 P3d 990 (2008). See also Casarotto v. Lombardi, 268 M 369, 886 P2d 931, 51 St. Rep. 1350 (1994), Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003), Wamsley v. Nodak Mut. Ins. Co., 2008 MT 56, 341 M 467, 178 P3d 102 (2008), and Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008).

Claim Outside Policy Coverage — No Duty to Defend: The Twites, who built housing complexes, were sued for failure to construct a housing complex in conformity with state and federal requirements to provide equal use and access for persons with disabilities. The Twites had a commercial insurance policy that required the insurer to defend the Twites against lawsuits alleging bodily injury resulting from accidents. The insurer determined that the claim against the Twites did not involve an injury and refused to defend, so the Twites brought a state action to require the insurer to defend. The District Court examined the policy, found no duty to defend, and granted summary judgment for the insurer, so the Twites appealed, but the Supreme Court affirmed. Liberally construing the policy in favor of finding an obligation to defend, the court nevertheless found that the policy covered only bodily injury caused by an accident, and here no accident occurred. The claim unequivocally fell outside the policy's coverage, so there was nothing for a court to construe and no reason to impose a duty to defend. The Twites failed to raise a genuine issue of material fact, and summary judgment for the insurer was affirmed. Twite Family Partnership v. Unitrin Multi Line Ins., 2008 MT 310, 346 M 42, 192 P3d 1156 (2008).

Farmowners Policy Construed to Cover Individuals, Not Partnership: Modroo's daughter was killed in an auto accident, and Modroo sought coverage under a farmowners policy that listed Modroo (and by definition Modroo's family members) as insureds. The insurer asserted that the policy was for the family farming partnership and covered only insureds who were driving a vehicle insured under the policy, which the daughter was not. The District Court agreed and held that the policy did not cover Modroo individually or family members. On appeal, the Supreme Court determined that the insurer's interpretation was reasonable but was not the only interpretation. Another reasonable interpretation was that the policy granted Modroo coverage as an individual because the named insured block on the form listed Modroo, not the partnership. If the insurer intended to cover only the partnership, that entity could have been listed as the named insured, but no reason existed for the insurer to list individuals as insureds unless it intended coverage to apply to them. Construing the ambiguity against the insurer, the policy was held to cover Modroo individually, and the daughter as a family member as well. Modroo was entitled to medical payments under the farmowners policy and the District Court decision was reversed. Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008). See also Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003).

Bodily Injury in Insurance Policy May Include Mental or Psychological Injury Accompanied by Physical Manifestations — Jacobsen Overruled: Defendant caused an automobile accident that injured two brothers, one of whom suffered severe trauma and was hospitalized for an extended period. The boys' mother filed a negligence action against defendant claiming emotional and physical injuries to herself and the brother who was not struck by the vehicle, including the mother's stress, migraine headaches, pain, depression, and a rapid heartbeat when hearing sirens, and the brother's becoming withdrawn. Defendant sought liability coverage from her insurer, and the District Court, relying on Jacobsen v. Farmers Union Mut. Ins. Co., 2004 MT 72, 320 M 375, 87 P3d 995 (2004), granted the insurer's motion for a declaratory judgment on grounds that the insurer was not obligated to provide a defense or coverage to defendant because defendant's policy did not cover the claimed emotional injuries or physical injuries resulting from the emotional injuries within the definition of bodily injury. On appeal, the Supreme Court reexamined the Jacobsen analysis in light of subsequent case law and overruled Jacobsen. Bodily injury as construed in an insurance policy includes a mental or psychological injury that is accompanied by physical manifestations. Defendant's insurance policy provided general coverage for damages that the insured was legally obligated to pay because of a bodily injury sustained by any person, which in this case included the physical manifestations that accompanied the mother's and brother's mental and psychological injuries. Allstate Ins. Co. v. Wagner-Ellsworth, 2008 MT 240, 344 M 445, 188 P3d 1042 (2008), followed in Tucker v. Farmers Ins. Exch., 2009 MT 247, 351 M 448, 215 P3d 1 (2009).

No Coverage for Personal Property in Insured Company's Care for Damage by Company Employees: Plaintiff company serviced oil wells, and during the removal and reinstallation of the rods and tubing of a well, company employees dropped a piece of new tubing, causing about $30,000 of damage to the tubing and the tubing anchor. The tubing did not belong to plaintiff, but was provided by a separate company and was onsite when the work began. Plaintiff filed an insurance claim with defendant insurer, but the claim was denied on grounds that the tubing was in plaintiff's care, custody, and control and that such an occurrence was not covered by plaintiff's commercial general liability policy, which excluded coverage for property damage to personal property in plaintiff's care, custody, and control. The District Court agreed and granted summary judgment for the insurer. Plaintiff appealed on grounds that a separate policy provision canceled out the exclusion by providing that plaintiff's employees were not considered insureds for purposes of property damage to property in plaintiff's care, custody, and control, and because the damage was caused by the employees, the exclusion did not apply. Interpreting the policy as a whole, the Supreme Court affirmed. Because plaintiff was a corporation, it could act only through its employees, who were acting within the scope of their employment, so the property was also in plaintiff's care, custody, and control and was therefore excluded from coverage. Lambert Well Serv., Inc. v. Wellington Specialty Ins. Co., 2008 MT 212, 344 M 204, 186 P3d 1255 (2008).

Insurance Policy Provisions Excluding Coverage for Medical Payments Paid by Workers' Compensation Not Ambiguous or Against Public Policy: Newbury's auto insurance policies provided medical coverage for bodily injury sustained through being struck as a pedestrian by a motor vehicle or trailer, except to the extent that workers' compensation benefits were required to be payable. Newbury was struck by a vehicle while on the job, and workers' compensation paid all but $1,175.80 of Newbury's medical expenses. Newbury then submitted an insurance claim seeking the full $10,000 in medical benefits from the insurance policies, but the insurer paid only the remaining $1,175.80 not paid by workers' compensation. Newbury asserted that the workers' compensation provisions in the policies were ambiguous and against public policy. The District Court granted summary judgment for the insurer, and Newbury appealed. The Supreme Court held that the policy, taken as a whole, was not ambiguous because it clearly demonstrated an intent to exclude coverage and did not defeat coverage or render policy coverage illusory. Moreover, the workers' compensation provisions were not violative of public policy. Newbury's expectations were not objectively reasonable, and Newbury received exactly the coverage for which he paid. Allowing Newbury to receive more than the total amount of medical expenses would have resulted in a windfall to Newbury. The District Court was affirmed. Newbury v. St. Farm Fire & Cas. Ins. Co., 2008 MT 156, 343 M 279, 184 P3d 1021 (2008), distinguishing Sullivan v. Doe, 159 M 50, 495 P2d 193 (1972), Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003), and Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003), and followed in Conway v. Benefis Health Sys., Inc., 2013 MT 73, 369 Mont. 309, 297 P.3d 1200.

Diesel Fuel Properly Considered Pollutant for Purposes of Commercial Liability Insurance Policy Exclusion: A petroleum company held commercial liability and property insurance policies that contained a standard absolute pollution exclusion clause disclaiming coverage for spills resulting from pollutants, which were defined to include liquid irritants or contaminants. The company also held a coverage extension that provided coverage for expenses to extract pollutants from land or water. When a diesel fuel spill occurred on the company's property, the company sought insurance reimbursement under the policies and also submitted claims to the Montana Petroleum Tank Release Compensation Board for reimbursement for corrective action costs. The insurer denied the claim, and after the company subrogated the claim to the Board, the Board sought reimbursement from the insurer, but the insurer denied all reimbursement requests, so the Board sued to recover corrective costs from the insurer. The District Court concluded that diesel fuel was a pollutant and that coverage was therefore excluded under the commercial general liability portion of the policy. On appeal, the Board asserted that the court erred in denying coverage, but the Supreme Court affirmed. The terms of the pollution exclusion clause were not ambiguous, and when viewed from the objective perspective of the average consumer, diesel fuel was properly included in the definition of pollutant. The District Court correctly denied coverage under the commercial general liability portion of the policy disclaiming coverage for spills resulting from pollutants. Mont. Petroleum Tank Release Comp. Bd. v. Crumleys, Inc., 2008 MT 2, 341 M 33, 174 P3d 948 (2008), distinguished in High Country Paving, Inc. v. United Fire & Cas. Co., 2022 MT 72, 408 Mont. 202, 507 P.3d 1165, holding that a technical violation of the Property and Casualty Insurance Policy Language Simplification Act, 33-15-333 through 33-15-340, may not be used to invalidate unambiguous policy exclusions that would result in an increase of the risk assumed.

Application of Improper Paint to Water Treatment Center Pipes — Definition of Physical Injury in Context of Commercial General Liability Insurance Contract: Plaintiff entered a contract with the city of Libby for construction of a water treatment plant. Plaintiff then entered a subcontract with defendant to paint the filter tanks and pipes at the plant. Plaintiff was listed as an additional insured on defendant's commercial general liability insurance policy. Defendant used an improper paint, and the city sued plaintiff as the general contractor for repainting costs. The insurer refused to defend or indemnify plaintiff, claiming that policy exclusions precluded coverage for the city's claim. Plaintiff successfully argued in District Court that the exclusions applied only to defendant as the named insured. On appeal, the Supreme Court considered whether the policy language referring to physical injury to tangible property covered the application of improper paint, concluding that the policy applied. Physical injury refers to a physical and material alteration resulting in a detriment. The policy covered property damage, including loss of use, and application of the improper paint physically and materially altered the tanks and pipes, resulting in a detriment to the city. The District Court was affirmed. Swank Enterprises, Inc. v. All Purpose Serv., Ltd., 2007 MT 57, 336 M 197, 154 P3d 52 (2007), following Lindsay Drilling v. USF&G, 208 M 91, 676 P2d 203 (1984). See also Newman v. Scottsdale Ins. Co., 2013 MT 125, 370 Mont. 133, 301 P.3d 348.

Clause in Insurance Policy Excluding Coverage for Transported Property Valid: Plaintiffs were transporting snowmobiles on a trailer when they were involved in a multiple vehicle accident that resulted in damage to their vehicle and the destruction of the trailer and snowmobiles. The insurer covered the loss of the trailer, but declined to compensate for the loss of the snowmobiles on grounds that they were excluded from policy coverage, and plaintiffs filed suit to recover damages. The District Court held that the policy exclusion for damage to property being transported was valid and granted the insurer summary judgment. On appeal, plaintiffs contended that the policy provision violated 61-6-301, which mandates motor vehicle insurance. The Supreme Court agreed that an exclusion to mandatory coverage is void and unenforceable absent a statutory exclusion, but then noted that the statutory exclusion in 61-6-103 allows a policy exclusion for damage to property transported by the insured. The court held that the exclusion in 61-6-103 is not inconsistent with the purpose and intent of 61-6-301 and that because the policy provision was not void, there was no genuine issue of material fact and summary judgment was proper. Grimsrud v. Hagel, 2005 MT 194, 328 M 142, 119 P3d 47 (2005). See also Bain v. Gleason, 223 M 442, 726 P2d 1153 (1986), and Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32 (1997).

Coverage Under Products Completed Operations Hazard Policy Inapplicable When Work Never Completed: Defendant had a products completed operations hazard policy with plaintiff insurer that triggered coverage when all contracted work was completed or when part of the work completed was put to its intended use but future service, maintenance, correction, repair, or replacement might be required. A complaint against defendant alleged that despite repeated requests and promises, the work in question was never completed. Because the work was not completed, materials were not installed, labor was not performed, and the system that was installed was inadequate for the intended purpose, coverage pursuant to defendant's products completed operations hazard policy did not apply. The reasonable expectations doctrine was also inapplicable because the policy language excluded such coverage. Generali-U.S. Branch v. Alexander, 2004 MT 81, 320 M 450, 87 P3d 1000 (2004), following Wellcome v. Home Ins. Co., 257 M 354, 849 P2d 190 (1993).

No Duty to Defend Property Damage or Fraud Claim When No Property Damage or Fraud Asserted: Defendant contended that plaintiff insurer had a duty to defend and provide coverage under defendant's commercial general liability policy, which provided coverage for property damages. However, the claim did not seek compensation for property damages for physical injury to tangible property, but rather for sums fraudulently paid to defendant based on a breach of contract. Because allegations in the complaint did not set forth facts that brought the event within the policy provisions and specifically excluded coverage for a fraud claim, the insurer had no duty to defend the claim. Generali-U.S. Branch v. Alexander, 2004 MT 81, 320 M 450, 87 P3d 1000 (2004), following Graber v. St. Farm Fire & Cas. Co., 244 M 265, 797 P2d 214 (1990). See also Farmers Ins. Exch. v. Minemyer, 2023 MT 138, 413 Mont. 60, 532 P.3d 837, holding that claims for purely economic loss do not create a duty to defend against property damage when no direct physical injury occurred.

Bodily Injury Not Inclusive of Emotional or Psychological Injury Within Terms of Uninsured Motorist Policy: Jacobsen was driving a car insured by defendant when he stopped to assist another motorist who was unconscious with a bleeding head wound. Despite Jacobsen's ministrations, the motorist died a few days later, and the cause was determined to be suicide. The next year, Jacobsen began seeking treatment for emotional distress suffered as a result of the incident and filed a claim with defendant to recover uninsured motorist benefits and medical pay benefits. The

District Court granted summary judgment for defendant, and Jacobsen appealed on grounds that his policy for uninsured motorist coverage included damages for bodily injury sustained by the insured caused by an accident. The Supreme Court held that the term "bodily injury" was not ambiguous and was limited to physical injury caused by an accident but did not include emotional or psychological injuries. Thus, Jacobsen's emotional injury, including resulting physical manifestations, did not constitute bodily injury as defined in the insurance contract and was not compensable. Jacobsen v. Farmers Union Mut. Ins. Co., 2004 MT 72, 320 M 375, 87 P3d 995 (2004), following Bain v. Gleason, 223 M 442, 726 P2d 1153 (1986), and Aetna Life & Cas. Co. v. First Sec. Bank of Bozeman, 662 F. Supp. 1126 (D.C. Mont. 1987). Jacobsen was overruled in Allstate Ins. Co. v. Wagner-Ellsworth, 2008 MT 240, 344 M 445, 188 P3d 1042 (2008), to the extent that bodily injuries include mental or psychological injuries that are accompanied by physical manifestations.

No Dual Residency in Montana Despite Joint Custody Provisions — Affidavit Indicating Future Residency Intent Irrelevant: When the parties were divorced in Nevada, physical custody of their child was granted to the mother, who continued to reside with the child in Nevada, and Umland moved to Montana, having been granted visitation rights. When the child died in an automobile accident, Umland attempted to collect a settlement under his insurance policy, which provided coverage for relatives who were residents of the insured's household. As proof that the child was a resident of Montana, Umland submitted an affidavit asserting that the child had indicated an intent to reside with Umland. The District Court disallowed the affidavit and held that the policy did not apply because the child was not a resident. On appeal, Umland argued that because 1-1-215 establishes a minor's residence as the residence of the parent having legal custody and because Montana allows for joint custody, it naturally followed that Montana allows dual residency. The Supreme Court disagreed. Montana law provides that there may be only one residence. The child customarily resided with the mother and thus was a Nevada resident. Further, the affidavit indicating the child's intent to reside in Montana in the future was irrelevant because the child was a Nevada resident at the time of death. Umland v. Nat'l Cas. Co., 2003 MT 356, 319 M 16, 81 P3d 500 (2003).

Failure of Insurer to Pay Within Sixty-Day Period Specified in Insurance Contract — No Error in Interpretation of Contract: An insurance contract required the insurer to pay for a loss within 60 days after the insurer received proof of loss and: (1) the parties reached an agreement; (2) there was a final judgment; or (3) the insured filed an appraisal with the insurer. The insured sought money damages because the claim was not paid within the 60-day period following the joint appraisal, which resulted in plaintiffs' alleged mental anguish and emotional distress. However, given a lengthy dispute over the amount of damages, the significant disparity between estimates, and plaintiffs' rejection of the joint appraisal, the District Court found that the agreement contemplated by the contract that would trigger the 60-day payment period was never reached. Plaintiffs appealed on grounds that the District Court misinterpreted the contract. The Supreme Court affirmed. The rejected joint appraisal did not constitute an agreement. Because the contractual requirements for the 60-day payment period were not met, the District Court did not err when it declined to conclude that the insurer should have made payment within 60 days of the joint appraisal. Nelson v. Farmers Union Mut. Ins. Co., 2003 MT 101, 315 M 268, 68 P3d 689 (2003).

Employer's Liability Exclusion Provision Barring Coverage for Claims Arising From Employee's Death: Defendant's employee was killed in an on-the-job accident, and the employee's spouse sued for damages. Defendant's insurance policy contained an employer's liability exclusion provision that excluded liability for bodily injury to employees of the insured. The District Court found that the employee's injuries were excepted from coverage under the exclusion provisions of the policy, but the spouse appealed on grounds that the exclusion applied only to injuries sustained by leased workers, that the employer reasonably expected that the insurer would defend employment-related claims not precluded by the workers' compensation exclusivity rule, and that the employer's conduct, which contributed to the injury, did not satisfy the definition of intentional act for purposes of the intentional act exclusion provision in the insurance policy, rendering the exclusion inapplicable. The Supreme Court noted that the pivotal issue was whether the liability exclusion was clear and unambiguous and concluded that because it was, the remaining issues would not be addressed. A common sense interpretation of the term "employee" would lead the average consumer of insurance to understand that the term clearly and unambiguously refers to all persons engaged in services for wages and salary by another, and because the injured worker was an employee, the employer's liability exclusion provision barred coverage for that worker's injuries. Farmers Union Mut. Ins. Co. v. Horton, 2003 MT 79, 315 M 43, 67 P3d 285 (2003).

Denial of General Liability Coverage Based on Liquor Liability Exclusion — Failure to Raise Alternative Negligence Theory — Summary Judgment Proper: Cusenbary was injured when a bar patron drove a car through the wall of Mortensen's tavern. Mortensen was covered by USF&G Co. under a general liability policy, but the insurance included a liquor liability exclusion. When Mortensen tendered the claim to USF&G Co. for defense, the company denied coverage and refused to defend based on the exclusion, so Cusenbary's claim was tried to a jury and Mortensen was found guilty of negligence (see Cusenbary v. Mortensen, 1999 MT 221, 296 M 25, 987 P2d 351 (1999)). Mortensen then assigned all rights to coverage under the general liability policy to Cusenbary. Cusenbary then sued USF&G Co., contending that the company had a duty to indemnify Mortensen for negligent behavior in management of the bar, separate from the negligent conduct of serving alcohol to an intoxicated patron, because the separate conduct was not excluded by the liquor liability exclusion. The District Court granted summary judgment for USF&G Co., holding that the separate conduct related directly to the improper service or sale of alcohol and that Mortensen failed to set forth evidence supporting an alternative negligence theory, so as a matter of law, Mortensen's judgment was excluded by the express language of the policy. The Supreme Court affirmed, citing Sheffield Ins. Co. v. Lighthouse Properties, Inc., 234 M 395, 763 P2d 669 (1988). All claims and arguments at trial were related to Mortensen's negligence in serving alcohol, and no assertion was ever made that the proposed evidence was relevant to any other theory of negligence or to any other theory. All of the claims arose from serving alcohol and were thus excluded from coverage. Cusenbary v. USF&G Co., 2001 MT 261, 307 M 238, 37 P3d 67 (2001).

"Other Insurance" Clause Upheld to Deny Unjust Enrichment: Summers purchased a homeowner's policy from American and 2 years later purchased an additional policy from National without canceling his first policy. The home was subsequently burned, and Summers filed a claim with American. When American learned of the policy with National, National filed an interpleader action with the District Court and deposited its policy limit of $77,000, to which both American and Summers claimed entitlement. The American policy contained explicit language that the policy terminated upon the purchase of the subsequent policy by Summers. Relying on the public policy enunciated in automobile insurance stacking cases, Summers argued that the "other insurance" clause in American's policy was void as a matter of public policy. See Bennett v. St. Farm Mut. Auto. Ins. Co., 261 M 386, 862 P2d 1146 (1993). The Supreme Court disagreed, holding that stacking automobile policies was allowed in order to ensure that victims receive adequate compensation but that in the case before it, Summers could not demonstrate that the compensation received from National did not fully cover his loss and therefore American did not have to pay the homeowner a second time for the loss and was only liable to Summers for the premiums collected after Summers obtained the National policy. The Supreme Court also disagreed with Summer's claim that pursuant to 33-24-102, the actual value of the property could not be ascertained and therefore the coverage of both policies should be taken as conclusively showing the value of the property. The Supreme Court stated that because it had already found that American's policy terminated automatically under the "other insurance" clause, when Summers purchased the second policy, 33-24-102 was inapplicable. Nat'l. Cas. Co. v. Am. Bankers Ins. Co. of Fla., 2001 MT 28, 304 M 163, 19 P3d 223, (2001).

Purchase of Separate, Specific Motor Vehicle Policy Not Considered to Terminate Coverage as After-Acquired Vehicle Under Prior Policy: Prior to purchasing a Ford Escort, Fitzpatrick had a liability policy (policy one) in effect that provided coverage of $500,000 per occurrence, identified three vehicles as insured, and provided similar coverage for any newly acquired car obtained during the policy period, but only until Fitzpatrick asked for insurance on the newly acquired vehicle and paid any required additional premium or within 30 days of purchase, whichever was shorter. After buying the Escort and within the required time, Fitzpatrick requested a separate policy (policy two) for that vehicle, with coverage of $100,000 per occurrence, but was never billed for any additional premium. Both policies were in effect when Christensen was injured while riding in the Escort. The insurer claimed that $100,000 was available under policy two and tendered that amount to pay health care providers and the various claimants. Christensen asked the District Court to conclude that additional coverage was available under the "after-acquired vehicle" provision in policy one, asserting that both policies should be stacked to provide a total of $600,000 of coverage. The District Court relied on Bramlett v. St. Farm Mut. Auto. Ins. Co., 468 P2d 157 (Kans. 1970), and Beck v. Aetna Cas. & Surety Co., 553 P2d 397 (Colo. 1976), in holding that the purpose of after-acquired vehicle coverage is to provide automatic coverage only until coverage on the new vehicle is obtained, that because a separate, specific policy had been requested, the Escort was not an after-acquired vehicle under policy one, and that therefore coverage should be limited to $100,000. The Supreme Court distinguished Bramlett and Beck because the policy language in those cases was not the same and found the reasoning in Carey v. St. Farm Mut. Ins. Co., 367 F2d 938 (4th Cir. 1966), to be more persuasive. In the present case, the policy did not require Fitzpatrick to elect coverage if more than one policy was applicable, as it did in Bramlett and Beck. Rather, as in Carey, the clear policy language expressly extended coverage to all after-acquired vehicles, provided that notice was timely. Therefore, the District Court erred when it concluded that the purchase of specific coverage under policy two terminated coverage as an after-acquired vehicle under policy one. If other conditions of after-acquired vehicle coverage are met, coverage on the newly acquired vehicle attaches at the time of acquisition and for the policy period unless the insured refuses to pay any additional premium that is requested, which she was not. Further, Fitzpatrick's policy limiting the maximum amount recoverable to the highest applicable limit under any one policy, when more than one company policy applied to the same occurrence, was found to comport with Montana's antistacking provisions in 33-23-203. The highest applicable limit in this case was $500,000 under policy one, of which $400,000 remained, and the case was reversed to make the additional money available. Christensen v. Mtn. W. Farm Bureau Mut. Ins. Co., 2000 MT 378, 303 M 493, 22 P3d 624, 57 St. Rep. 1608 (2000).

Automobile Exclusion Held Applicable — No Duty to Defend: Dawn was driving the personal automobile of her father, Gerald, who was insured by Employers Mutual Casualty Company (EMC) both individually and as an officer and employee of Brabeck Construction, Inc. (BCI), when she was involved in an accident with Lesmeister. BCI itself was also insured by EMC. Lesmeister sued Gerald and BCI, alleging that Dawn was operating the vehicle at the express direction of Gerald for BCI business purposes, that Dawn was an employee of BCI, and that the doctrine of respondeat superior applied. EMC refused to defend, citing a standard automobile exclusion that excepted entrustment of a vehicle to another person. The District Court concluded that the definition of "insured" was ambiguous, construed the policy against the insurer, and held that EMC had a duty to defend. The Supreme Court reversed, holding that although BCI and Gerald were named insureds, the automobile exclusion, particularly the exclusion for the entrustment of an automobile to another person, was unambiguous and that EMC had no duty to defend. Brabeck v. Employers Mut. Cas. Co., 2000 MT 373, 303 M 468, 16 P3d 355, 57 St. Rep. 1596 (2000).

Motor Vehicle Liability Policy Language Not Ambiguous in Failing to Define "Accident" — Maximum Coverage in Accident Involving Multiple Liable Insureds: Appellants argued that an insured's policy was ambiguous in that it did not define the word "accident", contending that alleged negligent driving that caused a rollover accident and another person's alleged negligence in permitting the driver to use the vehicle constituted two separate accidents under the policy, giving rise to separate coverage, each with a $50,000 limit. The policy provided that regardless of the number of insured vehicles, insured persons, claims or policies, or vehicles involved in the accident, the insurer would pay no more than the limit of liability for each person injured in any one accident. The District Court concluded, and the Supreme Court agreed, that under the terms of the policy, the maximum amount paid by the insurer remained constant and the fact that an accident involved multiple liable insureds was inconsequential. Although "accident" was not defined, a reasonable person in the position of an insured would understand that the word refers to a singular event in which bodily injury or property damage results from the ownership, maintenance, or use of a vehicle. There was only one accident, and the District Court correctly concluded that although more than one act of negligence may have contributed, the maximum amount of coverage under the policy remained constant. Infinity Ins. Co. v. Dodson, 2000 MT 287, 302 M 209, 14 P3d 487, 57 St. Rep. 1196 (2000).

Plain Language of Policies Providing Insurance on Rental Car Construed — Primary Versus Excess Coverage: Hudson used a credit card to rent a 1995 Ford Mustang convertible from P.C. Rental, Inc. (P.C.). Three days later, Hudson lost control of the car, resulting in damages rendering the vehicle a total loss. At the time of the accident, P.C. had a commercial lines policy through Empire Fire and Marine Insurance Company (Empire) that included liability and physical damage coverage. Hudson did not own a vehicle and was not covered under a personal policy, but auto rental insurance was provided by the company whose credit card Hudson used for the rental. Empire paid P.C. the agreed actual cash value of the vehicle, minus a $1,000 policy deductible, then sold the damaged vehicle for salvage and received an additional $1,108. The credit card company, Visa U.S.A. (Visa), also paid P.C. about $7,800 to cover P.C.'s deductible and lost rental fees. P.C. then brought a breach of contract action against Hudson for failing to return the vehicle in the same condition in which it was rented, as required by the rental agreement. Hudson alleged that Chase Manhattan Bank (Chase), as issuer of the credit card, was responsible for damages sustained to the rental car under the terms of the rental insurance. Hudson subsequently filed for bankruptcy and assigned all rights in the third-party action against Chase to P.C. P.C. then amended the complaint to include the credit card company as defendant, alleging that the rental insurance provided coverage on a 24-hour basis for damage to a car rented with the credit card up to the full value of the car. Visa denied P.C.'s allegations regarding the rental insurance, alleged that Visa had met its obligations under the policy by covering P.C.'s deductible and lost rental fees, and moved for summary judgment, which was granted. The District Court concluded that Hudson was an insured under the liability policy provided to P.C. by Empire and thus Empire was not entitled to subrogate against its own insured. The court determined that because both policies provided damage coverage for the same vehicle, it was necessary to look to the "other insurance" clauses of the policies. The Empire policy stated that its coverage was primary, while the Visa policy stated that its coverage was excess coverage, so Empire was not entitled to recover any of the amount that it paid to P.C. from Visa. On appeal, the Supreme Court affirmed. Given the nature of the coverage available, no determination of whether Hudson was an insured under Empire's physical damage coverage was necessary or possible under the policies. The District Court did not err when it concluded that, based on the clear language of the policies, P.C.'s physical damage coverage was primary and Visa's rental insurance was excess. P.C. Rental, Inc. v. Chase Manhattan Bank, 2000 MT 106, 299 M 315, 998 P2d 1168, 57 St. Rep. 430 (2000).

"Arising Out of" Ambiguous — Coverage for Liability Not Excluded: Pablos were injured in a vehicle accident involving Moore, who was transporting a landscaping tractor for his employer. The employer was covered by a commercial general liability insurance policy that provided liability insurance for negligent acts of the corporation and its employees. Pablos contended that the employer was negligent in the hiring, training, and supervision of Moore. The employer conceded that the claim arose during the policy period and fell within the definitions of "bodily injury" and "occurrence" and that the policy would provide coverage unless coverage was denied by an exclusion but contended that coverage was excluded under both the exclusion for damages "arising out of" the use of an automobile and the exclusion for damages "arising out of" the transportation of mobile equipment. The District Court held that the term "arising out of" was ambiguous and, construing the instrument against the drafter-insurer, ruled that coverage for Pablos' accident was not excluded under the policy language. Noting that the phrase "arising out of" has been declared ambiguous in another insurance context in Wendell v. St. Farm Mut. Auto. Ins. Co., 1999 MT 17, 293 M 140, 974 P2d 623 (1999), the Supreme Court applied a similar rationale to the phrase in both exclusionary clauses at issue in the present case. The phrase was reasonably subject to more than one interpretation and thus ambiguous. Pursuant to Head v. Cent. Reserve Life of N. America Ins. Co., 256 M 188, 845 P2d 735, 50 St. Rep. 20 (1993), if the terms of an insurance policy are ambiguous, obscure, or open to different constructions, the construction most favorable to the insured or other beneficiary must prevail, particularly if an ambiguous provision attempts to exclude the liability of the insurer. Here, the policy did not clearly and unambiguously exclude coverage for the theories of liability pleaded by Pablos, and the District Court's summary judgment that coverage was owed on Pablos' claims for negligent hiring, training, and supervision of Moore was affirmed. Pablo v. Moore, 2000 MT 48, 298 M 393, 995 P2d 460, 57 St. Rep. 231 (2000), following Marquis v. St. Farm Fire & Cas. Co., 961 P2d 1213 (Kans. 1998).

Wrongful Discharge Suit — No Duty to Defend Under Unambiguous Liability Insurance Policy: Plaintiff filed an action against the insurer after the insurer refused to defend and indemnify it in a wrongful discharge action under a liability insurance policy that contained an unambiguous combined provisions endorsement and a professional liability provision. The court concluded that the combined provisions endorsement must be read along with the professional liability provisions. As a result, the insurer is not bound by the liability insurance policy to defend and indemnify the plaintiff in a wrongful discharge suit. Counterpoint, Inc. v. Essex Ins. Co., 1998 MT 251, 291 M 189, 967 P2d 393, 55 St. Rep. 1035 (1998).

Underinsured Motor Vehicle Defined — Policy Exclusion of Husband's Vehicle as Vehicle of "Relative" Upheld — Exclusion Not Contrary to Public Policy or Reasonable Expectations of Insured: Stutzman was injured in a one-car accident when her husband, John Turcotte, negligently lost control of his vehicle. Stutzman, who, along with Turcotte, was an insured in a policy written by Safeco, sued Safeco in an attempt to collect the underinsured motorist benefits provided in the policy. In its defense, Safeco raised the policy definition of an "underinsured motor vehicle" that excluded a motor vehicle owned by a "relative" of an insured. Citing decisions from other jurisdictions, the Supreme Court held that because Turcotte was married to Stutzman at the time of the accident, Turcotte was Stutzman's "relative" within the meaning of the exclusion applicable to the underinsured motorist benefits of the policy and that the exclusion applied even though exclusions are generally to be narrowly construed against the insurer. The Supreme Court also held that although a court may invalidate an exclusion that violates Montana's mandatory insurance law, there is no requirement in Montana law for underinsured motorist coverage and, moreover, that public policy should uphold the exclusion because an insured could otherwise substitute less expensive underinsured motorist coverage for more expensive liability coverage. Further, citing Wellcome v. Home Ins. Co., 257 M 354, 849 P2d 190 (1993), the Supreme Court held that the doctrine of reasonable expectations of the insured is inapplicable when the terms of the policy clearly demonstrate an intent to exclude coverage. Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32, 54 St. Rep. 925 (1997). See also Counterpoint, Inc. v. Essex Ins. Co., 1998 MT 251, 291 M 189, 967 P2d 393, 55 St. Rep. 1035 (1998).

Automobile Insurance — Negligent Infliction of Emotional Distress — "Each Person" and "Each Accident" Coverage: While riding a bicycle, Carolyn's husband was struck by a car driven by Hintz. State Farm, Hintz's insurer, paid the estate of Carolyn's husband $25,000. Carolyn witnessed the accident and claimed that because she had an independent cause of action against Hintz, she was subject to the insurance policy limitation of $50,000 for "each accident" and not the $25,000 for "each person". The "each person" coverage was limited to that amount of damages caused to another resulting from bodily injury to one person. Citing Sacco v. High Country Independent Press, 271 M 209, 896 P2d 411 (1995), the Supreme Court held that because Carolyn had an independent cause of action, which was not derivative in the same manner as claims for loss of consortium, Carolyn was subject to the "each accident" limitation and not the limit applicable to "each person". Treichel v. St. Farm Mut. Auto. Ins. Co., 280 M 443, 930 P2d 661, 54 St. Rep. 1 (1997).

Applicability of Newly Acquired Property Provision — "Acquire": John Deere Insurance Company (Deere) claimed that it had not provided insurance coverage for certain logging equipment pursuant to the newly acquired property provision of its insurance policy because the loss occurred before the purchaser notified Deere of the equipment and after the 30-day notice provision of the policy had expired. In determining whether coverage applied, the Supreme Court interpreted the term "acquire" in this case as requiring a showing of some vested interest or substantial ownership in property, something more than a temporary possession. Citing N. Assurance Co. v. Farm Bureau Mut. Ins. Co., 808 P2d 911 (Kans. Ct. App. 1991), the court noted that the newly acquired coverage clause is offered as a convenience to the insured and that its purpose is to broaden coverage to provide protection at the earliest possible time needed by the insured. Because the purchaser had a 1-week trial period during which insurance was provided by the seller, the time period for application of the newly acquired property provision did not begin running until after the trial period. Thus, Deere was responsible for coverage during the 30-day notice period. Federated Mut. Ins. Co. v. Anderson, 277 M 134, 920 P2d 97, 53 St. Rep. 618 (1996). On remand, defendant was entitled to present proof to the jury that third-party defendant, which had been sanctioned for prosecuting a meritless appeal, was involved in a continuing course of bad faith postjudgment conduct, and proof of that conduct was admissible to prove malice. Third-party defendant's alleged failure to conduct a reasonable investigation and its subsequent refusal to pay the claim, although occurring more than 2 years before commencement of plaintiff's cause of action, were, if proved, ostensibly part of the bad faith postjudgment conduct. The evidence of those acts was not time-barred. Federated Mut. Ins. Co. v. Anderson, 1999 MT 288, 297 M 33, 991 P2d 915, 56 St. Rep. 1152 (1999).

Ambiguous Family Member Automobile Liability Exclusion Construed Against Insurer: The U.S. District Court for the District of Montana certified a question to the Montana Supreme Court that arose in two consolidated cases. In each case, a family member was injured in an automobile accident as the result of the negligence of another family member, and in each case, the insurer relied upon exclusions that purported to deny liability to an insured, beyond that required by 61-6-301, for injuries caused to another family member. The U.S. District Court asked whether the amendatory endorsements relied upon in each case were valid and enforceable. The Supreme Court held that the endorsements were not valid and enforceable because the language relied upon by the insurers was ambiguous. Citing Worldwide Underwriters Ins. Co. v. Brady, 973 F2d 192 (3rd Cir. 1992), the Supreme Court held that the question of ambiguity must be resolved from the standpoint of a consumer of average intelligence not trained in law or the insurance business and that the policies in question were subject to more than one interpretation regarding the extent of the coverage for damage to a household member. The Supreme Court also held that the remainder of the policies should be enforced according to their terms, giving the insureds the benefit of the value of the policies with no applicable exclusion. Leibrand v. Nat'l Farmers Union Property & Cas. Co., 272 M 1, 898 P2d 1220, 52 St. Rep. 557 (1995), discussed in Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32, 54 St. Rep. 925 (1997), and followed in Iwen v. U.S. W. Direct, 1999 MT 63, 293 M 512, 977 P2d 989, 56 St. Rep. 263 (1999). However, see Fisher v. St. Farm Mut. Auto. Ins. Co., 2013 MT 208, 371 Mont. 147, 305 P.3d 861, granting summary judgment to insurer when family member exclusion in policy is not ambiguous, followed in Meadow Brook, LLP v. First Am. Title Ins. Co., 2014 MT 190, 375 Mont. 509, 329 P.3d 608.

Cost of Asbestos Removal Covered in Policy — Narrow Construction of Policy Exclusions: A "code exclusion" clause in a policy issued on a commercial building relieved insurer of any obligation to pay additional costs for the removal of debris from a fire-damaged building when the cost of removal was increased because of regulatory restrictions. Insurer claimed exemption when the cost of removal was increased because the debris contained asbestos, a substance subject to legal regulation. However, coverage exclusions are contrary to the fundamental protective purpose of an insurance policy and are therefore subject to a rule of narrow construction. Noting that the policy as drafted affirmatively extended coverage for debris removal and that the asbestos in question was considered debris as a result of fire damage, the Supreme Court held that insurer was liable contractually and that the exclusion was inapplicable. Farmers Union Mut. Ins. Co. v. Oakland, 251 M 352, 825 P2d 554, 49 St. Rep. 72 (1992), following Garnett v. Transamerica Ins. Serv., 800 P2d 656 (Idaho 1990), and followed in Newman v. Scottsdale Ins. Co., 2013 MT 125, 370 Mont. 133, 301 P.3d 348.

Determination of "Resident of Insured's Household" — Boatright Analysis: The Supreme Court adopted the analysis set out in Iowa Nat'l Mut. Ins. Co. v. Boatright, 516 P2d 439 (Colo. App. 1973), in designating factors important in ascertaining the meaning of the term "resident of the insured's household", including: (1) the subjective or declared intent of the individual; (2) the formality or informality of the relationship between the individual and the members of the household; (3) the existence of another place of lodging by the alleged resident; and (4) the relative permanence or transient nature of the individual's residence in the household. Farmers Union Mut. Ins. Co. v. Blair, 250 M 52, 817 P2d 1156, 48 St. Rep. 877 (1991).

Home Owner's Insurance Automobile Exclusion Inapplicable to Underlying Negligence Action: An automobile exclusion in a home owner's policy that excluded from coverage incidents arising from the use, loading, or unloading of a vehicle did not apply to a shooting incident that occurred during a party inside a house after the passenger had left his car, even though the gun was stored in the car prior to the shooting. Farmers Union Mut. Ins. Co. v. Blair, 250 M 52, 817 P2d 1156, 48 St. Rep. 877 (1991), distinguishing Wyo. Farm Bureau Ins. Co. v. Mobile Ins. Co., 467 F2d 990 (10th Cir. 1972), and Colo. Farm Bureau Mut. Ins. Co. v. W. Am. Ins. Co., 540 P2d 1112 (Colo. App. 1975).

Duty to Defend — "Bodily Injury" — "Occurrence": In a federal action based upon diversity jurisdiction in which an insurer sought a declaration of the scope of coverage under an insurance policy, the District Court held that the policy included coverage for "bodily injury". The insured's complaint alleges she suffered such injury. Consequently, the insurer has a duty to defend because the complaint alleges facts that, if proven, would result in coverage. It is the insured's claim that determines the insurer's duty to defend and not whether the injured party can prove an action against the insured for damages. The District Court held that the term "occurrence" as defined in the policy is unambiguous and includes unintended bodily injury, although the insured's operative conduct was intentional. Mut. Serv. Cas. Ins. Co. v. Co-op Supply, Inc. of Dillon, 699 F. Supp. 1438, 45 St. Rep. 2416 (D.C. Mont. 1988).

Scope of Coverage — "Property Damage": In a federal action for wrongful discharge based upon diversity jurisdiction in which an insurer sought a declaration of the scope of coverage under an insurance policy, the District Court held that the term "property damage" that included only damage to "tangible property" does not include loss of past and future salary, loss of health benefits, and other benefits of employment because those are intangible economic losses. Mut. Serv. Cas. Ins. Co. v. Co-op Supply, Inc. of Dillon, 699 F. Supp. 1438, 45 St. Rep. 2416 (D.C. Mont. 1988).

Umbrella Policy — Duty to Defend: In a federal action for wrongful discharge based upon diversity jurisdiction in which an insurer sought a declaration of the scope of coverage under an umbrella insurance policy, the District Court held that the insured's allegations in her complaint of "bodily injury" fall within the scope of coverage under the "personal injury" portion of the policy and therefore create a duty to defend. Mut. Serv. Cas. Ins. Co. v. Co-op Supply, Inc. of Dillon, 699 F. Supp. 1438, 45 St. Rep. 2416 (D.C. Mont. 1988).

Discharge From Employment — Injury to Be Expected — Intentional Conduct Exclusion Applied: Employee claimed he was intentionally fired for refusing to violate Montana law, resulting in emotional and mental injury. The employer tendered the suit to National Surety Corporation, which refused to defend on grounds that the policy did not provide coverage for an occurrence of this sort. The District Court agreed, and the Supreme Court affirmed on the basis that the claimed injury fell outside the definition of "occurrence". Although an intentional act may constitute an occurrence when the alleged injury was not the expected or intended result of the conduct, here there was no injury alleged that could not be expected to flow from the termination. Therefore, the intentional conduct exclusion was properly applied. Daly Ditches Irrigation District v. Nat'l Sur. Corp., 234 M 537, 764 P2d 1276, 45 St. Rep. 2112 (1988), distinguishing Lindsay Drilling v. USF&G, 208 M 91, 676 P2d 203 (1984); Millers Mut. Ins. Co. v. Strainer, 204 M 162, 663 P2d 338 (1983); and NW. Nat'l Cas. Co. v. Phalen, 182 M 448, 597 P2d 720 (1979). See also Mary & Alice Ford Nursing Home v. Fireman's Ins., 446 N.Y.S.2d 599 (1982), Commercial Union Ins. Co. v. Superior Court, 242 Cal. Rptr. 454, 196 Cal. App. 3d 1205 (1987), and Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375.

Liquor Liability Provision Unambiguous — No Separate Theory of Negligence: The plaintiff, injured by an automobile driver served liquor by the defendant tavern owner, sued the owner on negligence theory. The plaintiff argued that the tavern owner's liability based on negligence is distinguished from liability based on the sale or service of liquor. The court disagreed, holding that summary judgment was proper because the insurance policy provision excluding liquor liability coverage was clear and unambiguous and all claims against the tavern owner relate to the sale or service of liquor. Sheffield Ins. Co. v. Lighthouse Properties, Inc., 234 M 395, 763 P2d 669, 45 St. Rep. 1999 (1988). An amended complaint was later filed that attempted to set forth an additional theory of liability not based on the sale of alcohol. The theory was that an ordinary duty of due care was owed the bar patron based on his status as business invitee and that the bartender breached that duty by allowing patron to leave the bar in the company of an obviously intoxicated person. However, the amended complaint was still based on actions related to the sale of alcohol and was therefore barred by res judicata. The District Court did not err when it held that the insurance policy also excluded liability for acts alleged in the amended complaint. Sheffield Ins. Co. v. Lighthouse Properties, Inc., 252 M 321, 828 P2d 1369, 49 St. Rep. 274 (1992), followed in Cusenbary v. USF&G Co., 2001 MT 261, 307 M 238, 37 P3d 67 (2001).

"Severance" of Limb Construed: A personal accident insurance policy providing coverage for loss of limb described "loss" as "actual severance through or above the wrist or ankle joints". In deciding whether a severed spinal cord that resulted in total loss of use of both legs constituted "loss" under the policy, the Supreme Court adopted the reasoning of the Washington Supreme Court as outlined in Neer v. Fireman's Fund, Am. Life Ins. Co., 692 P2d 830 (1985). Severance does not mean amputation or dismemberment, but rather accidental loss resulting from severance of some portion of the body through or above the ankle. Bauer v. Kar Prod., Inc., 230 M 422, 749 P2d 1385, 45 St. Rep. 322 (1988).

Exclusionary Clauses Regarding Faulty Workmanship Not Ambiguous: The exclusionary clauses in a comprehensive general liability insurance policy excluded coverage for property damage to the named insured's products and for property damage to work performed by or on behalf of the named insured. The Supreme Court, affirming the District Court's reliance on Stillwater Condominium Ass'n v. Am. Home Assur. Co., 508 F. Supp. 1075 (D.C. Mont. 1981), found the exclusions were unambiguous in eliminating coverage for repair or replacement of the insured's own faulty workmanship and that the underwriting policy sought to be articulated by the exclusionary clauses was widely recognized as a valid limitation upon standard, readily available liability insurance coverage. Taylor-McDonnell Constr. Co. v. Commercial Union Ins. Co., 229 M 34, 744 P2d 892, 44 St. Rep. 1757 (1987).

Consortium Claim Subject to "Each Person" Limit of Liability Coverage: Under mandatory motor vehicle insurance coverage statutes, husband's cause of action for consortium and wife's cause of action for bodily injuries are subject to the "one person limitation" set forth in 61-6-103 as referred to in 61-6-301. The policy in question does not extend coverage beyond the statutory requirements. Therefore, husband is not entitled to recover from the insurance company an amount over the limit specified for one person for consequential damages to himself resulting from injuries to his wife, such as loss of her services or consortium. Bain v. Gleason, 223 M 442, 726 P2d 1153, 43 St. Rep. 1897 (1986), distinguished in Treichel v. St. Farm Mut. Auto. Ins. Co., 280 M 443, 930 P2d 661, 54 St. Rep. 1 (1997).

Improper Denial of Malpractice Insurance — Claim Filed Within Policy Period: The Internal Revenue Service (I.R.S.) notified Walker that attorney Larson had underestimated the amount of estate tax owed by the estate. Larson's insurance company denied coverage, stating that Larson had failed to extend coverage to include claims reported after the policy expiration date. Walker filed malpractice, bad faith, and unfair trade practice claims against Larson. The District Court denied both Larson's and the insurance company's motions to dismiss and subsequently granted judgment in favor of the company. On appeal, the Supreme Court reversed, stating that under the authority of Link v. Cont. Cas. Co., 470 F2d 1133 (9th Cir. 1972), the ambiguity surrounding the term "claim" would be construed against the insurer. Walker had filed her claim against Larson within the policy period. Walker v. Larson, 223 M 333, 727 P2d 1321, 43 St. Rep. 1765 (1986).

Insurance Policy Clause Unambiguous: Home owners' insurance policy clause clearly and unambiguously covered only vehicles that met both requirements set forth in the provision. Therefore, the clause was within the general rule that when a contract is reduced to writing, the intent of the parties is ascertained from the writing alone if possible. Payne v. Safeco Ins. Co., 222 M 198, 720 P2d 1197, 43 St. Rep. 1171 (1986).

Business Pursuits — Steer-Roping Contest: Insured's policy on his ranch excluded business pursuits other than, among other things, farming. For 3 years he held three or four steer-roping contests a year in an arena he built. Nonprofessionals paid a fee and there was prize money, with insured keeping some of the fee money. Insured's own testimony showed he was regularly engaged in the contests for profit and thus was engaged in a business pursuit excluded from policy coverage. A summary judgment for insurer was therefore proper in insured's suit for failure to defend insured and pay an injured steer roper because there was no issue of material fact. Heggen v. Mtn. W. Farm Bureau Mut. Ins. Co., 220 M 398, 715 P2d 1060, 43 St. Rep. 475 (1986).

"Business Pursuit" — Definition: Montana has not adopted criteria for determining what is a business pursuit for purposes of an insurance policy clause excluding a business pursuit from coverage. The presence of a profit motive (not actual profit) is one characteristic of a business pursuit, and continually or regularly conducted activity may be a business pursuit even though it is not the primary occupation of the insured. In this case, insured's testimony that he had income and expenses relating to the pursuit and claimed them on his tax returns established a profit motive. Heggen v. Mtn. W. Farm Bureau Mut. Ins. Co., 220 M 398, 715 P2d 1060, 43 St. Rep. 475 (1986).

Aircraft Insurance — Insuring Clause in Form — Typed Use Clause — No Ambiguity: Within the definition of "insured" in the insurance form relating to aircraft insurance, a person operating the aircraft under a rental agreement was expressly not covered; in an attached typewritten declaration of uses, rental to pilots was expressly set forth as a permitted use of the aircraft. The federal District Court held that the contract was not susceptible to two constructions and resolved the ambiguity against the insurance company. The two clauses covered different subjects, and there was nothing in the limitations on use of the aircraft clause that expanded the insuring clauses to provide coverage to those who were expressly excluded. Ideal Mut. Ins. Co. v. Patzer, 624 F. Supp. 426, 42 St. Rep. 2080 (1985).

Insurer Exemption for Intentional Bodily Injury: Insurer was properly granted a summary judgment on its claims that it had no obligation to defend or pay a judgment against the insured, who had struck a coworker in the face twice. The policy excluded bodily injury either expected or intended from the standpoint of the insured. Whether insured intended the specific injuries (left cheekbone broken in three places) was not a question of fact precluding summary judgment. When an assailant strikes another in the face, it is irrelevant for purposes of such an insurance exclusion that the assailant causes a different injury than he subjectively intended. The court will not impose upon the insurer the impossible task of proving that the insured specifically intended to break the victim's cheekbone in three places by striking him with his fist. Mut. Serv. Cas. Ins. Co. v. McGehee, 219 M 304, 711 P2d 826, 42 St. Rep. 2038 (1985), followed in Burns v. Underwriters Adjusting Co., 234 M 508, 765 P2d 712, 45 St. Rep. 2089 (1988), and in Am. States Ins. Co. v. Willoughby, 254 M 218, 836 P2d 37, 49 St. Rep. 708 (1992).

Death Resulting From Fall Caused by Loss of Consciousness — Accidental Death: Insured had coverage for injuries, including death, resulting directly, and independently of all other causes, from an accident and not resulting from disease. He had a history of losing consciousness caused by years of overindulgence in alcohol. This would not in itself have caused death, but he lost consciousness, fell, hit his head on a sidewalk, and died. The injury and death were accidental under the policy and were caused by his head hitting the sidewalk, not by his propensity to lose consciousness. Coverage under the policy was required. Pond v. N. Am. Life & Cas. Co., 215 M 428, 697 P2d 1360, 42 St. Rep. 515 (1985).

Construction of Exclusionary Clause — Findings Not Clearly Erroneous: District Court determined that arrangement by which insured purchased truck for use of son-in-law in exchange for free hauling of insured's hay and cattle was on a share expense basis, and as such not excluded from coverage under insurance policy provision that excluded coverage for lease or rental. Supreme Court affirmed District Court judgment and held that the policy clause was ambiguous, capable of at least two interpretations, and as such capable of construction against the insurance company. The District Court findings were not clearly erroneous and therefore must be sustained. Bauer Ranch, Inc. v. Mtn. W. Farm Bureau Mut. Ins. Co., 215 M 153, 695 P2d 1307, 42 St. Rep. 255 (1985).

No Duty to Defend if No Coverage Under Policy: The insured's liability policy includes coverage for accidental occurrences but not for damage that is intentional or expected. The damage for which the insured claims coverage was expected and thus is not covered by the terms of the policy. The insurer has no duty to defend the insured if there is no liability to the insured under the policy provisions. USF&G v. Rae Volunteer Fire Co., 212 M 450, 688 P2d 1246, 41 St. Rep. 1857 (1984), followed in Burns v. Underwriters Adjusting Co., 234 M 508, 765 P2d 712, 45 St. Rep. 2089 (1988), and distinguishing NW. Nat'l Cas. Co. v. Phalen, 182 M 448, 597 P2d 720 (1979). Burns was followed in Brabeck v. Employers Mut. Cas. Co., 2000 MT 373, 303 M 468, 16 P3d 355, 57 St. Rep. 1596 (2000). See also Grimsrud v. Hagel, 2005 MT 194, 328 M 142, 119 P3d 47 (2005), and Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375.

Policy Language Unambiguous: The insurer issued a liability policy to the insured, a volunteer fire company. The insured made the purposeful decision to cease fighting a residential fire because the dwelling owners were not members of the fire company. The insured sought coverage under the policy as to damages claimed by the dwelling owners when their home was destroyed by the fire. The insured fire company claimed the policy language was ambiguous as it did not name the specific person who could activate the provision concerning the expectations or intentions of the company; therefore, the doubt should be resolved in favor of the insured. The policy language was not ambiguous, and the insured's board chairman had authority to activate the exclusion provisions. As a consequence, the insured can have an "expectation" of property damage through its authorized officer, a cause of damage not covered by the terms of the policy. USF&G v. Rae Volunteer Fire Co., 212 M 450, 688 P2d 1246, 41 St. Rep. 1857 (1984).

Duty to Defend — Intentional Versus Negligent Damage — Covered Occurrence: Plaintiff was retained to drill test holes on placer claims. The claim owners refused to pay plaintiff, causing plaintiff to foreclose on a mechanics' lien. The claim owners then counterclaimed, alleging plaintiff had intentionally or negligently salted the test results. Plaintiff tendered defense of the counterclaim to his insurer, the defendant. Defendant refused to defend, contending the allegations of the counterclaim were not covered by the insurance policy. The policy excluded from coverage damage "intended from the standpoint of the insured". The Supreme Court held that if the salting was done by third parties as a result of plaintiff's negligence, the action was covered by the policy. The drilling expense and inherent production costs established an intrinsic value in the core samples. There was a tangible property loss within the policy's coverage. The counterclaim set forth a covered "occurrence" as defined in the policy, and defendant was obliged to defend the counterclaim. Lindsay Drilling v. USF&G, 208 M 91, 676 P2d 203, 41 St. Rep. 193 (1984).

Concurrent Causation — Overlapping Coverage — Ambiguity Construed Against Insurer: In 1979, PCBs leaked from a transformer stored at the plant of Pierce Packing Company and contaminated its feed products. Trial established that negligent operation of a Pierce garbage truck had damaged the stored transformer; this was a proximate cause of the accident in concurrence with the design of the plant. The District Court imposed maximum liability under both the general and automobile liability provisions of both the primary and excess liability insurance policies. On appeal, the United States Court of Appeals affirmed, holding that under Montana law, there could be overlapping coverage for concurrent causes and any ambiguity in the policies regarding coverage or limits should be construed against the insurers. Unigard Mut. Ins. Co. v. Abbott, 732 F2d 1414 (9th Cir. 1984).

Conflict Between Contract and Certificate of Insurance: Decedent's employer provided him with group life insurance and paid the total premium. Employer kept the master policy, which stated that the benefit paid would be 300% of annual salary at the time of death, rounded to the nearest dollar. A certificate of insurance not containing this formula was issued to decedent and stated that his benefit would be $104,000. Employer paid premiums based on that amount. Decedent was not shown to have read the master policy. The certificate was issued pursuant to a statute requiring it. Decedent's salary upon his death was $14,700, and based on the policy formula, the correct benefit was $44,000. Insurer sent employer a corrected certificate showing the proper benefit 19 days before decedent died, but the certificate was not given to decedent or his wife until after his death, and neither was informed of the error and correction before death occurred. The master policy stated that the policy controlled in event of discrepancy between it and the certificate. On appeal from judgment that wife was entitled to a $104,000 benefit, the Supreme Court ruled that: (1) the certificate was part of the contract, and in view of the conflict the construction most favorable to the insured would be adopted and the policy provision that the policy governed would be disregarded; (2) insured contracted only indirectly, through his employer, with insurer and his certificate of insurance was his primary source of information regarding the policy and thus he was entitled to rely on the certificate to correctly state the coverage; (3) if the coverage stated on the certificate is incorrect, insured and beneficiaries are deprived of the chance to supplement coverage if they find it inadequate; (4) the amount of decedent's coverage was the essence of the policy; (5) insurer was the drafter of the policy and certificate and must bear the burden of the ambiguity it created; and (6) equity did not require reformation of the contract to correct the error as the certificate was a year old and due diligence would have resulted in discovery of the error before death. Martin v. Crown Life Ins. Co., 202 M 461, 658 P2d 1099, 40 St. Rep. 216 (1983).

"Good Health" Clause — Coverage Not Precluded: "Good health" clause in application for life policy did not preclude recovery where insured suffered undiagnosed terminal cancer at the time of application and thus was unaware of illness. Friez v. Nat'l Old Line Ins. Co., 703 F2d 1093 (9th Cir. 1983).

Partnership — Coverage of Individual Partners' Automobiles: When policy extended liability coverage to any automobile owned by the named insured, which was the partnership, without any limitation as to vehicles listed on the policy and when endorsement extending coverage to the individual partners provided that coverage for them would be the same as for the partnership, the policy provided coverage to the automobile owned by one of the partners but not listed on the policy. USF&G v. Newman, 656 F2d 457 (9th Cir. 1981).

Construction of Exclusionary Clause: Applying the principal that an insurance policy is to be interpreted as a whole in the entirety of its terms and conditions and, if ambiguous, the construction most favorable to the insured is to be adopted, the Supreme Court held that enlargement of the exclusionary clause to encompass an alleged agent of the insured regarding the use, possession, and physical control of property is unwarranted and lacks merit. Lindell v. Ruthford, 183 M 135, 598 P2d 616 (1979).

Responsibility for Coverage: When two insurers have each obligated themselves to provide primary coverage, the coverage should be prorated between them in accordance with the limits of liability applicable in each policy. Truck Ins. Exch. v. Transport Indem. Co., 180 M 419, 591 P2d 188 (1979).

Right of Subrogation: There is no right of subrogation in favor of an insurance company against its own insured. This is true both as to the named insured and any party to whom coverage is extended under the terms of the policy. Truck Ins. Exch. v. Transport Indem. Co., 180 M 419, 591 P2d 188 (1979).

Oral Contract for Insurance: Since there was no evidence that an automobile insurance agent and his prospective client were dealing for temporary insurance, the case must be judged, not as a possible oral binder, but as one involving a regular insurance policy. Assuming, without deciding, that there may be an oral insurance policy in Montana, it is required by case law that an oral contract must contain the essential elements of a contract. There was no meeting of minds in this case. St. Farm Mut. Auto. Ins. Co. v. Lee, 35 St. Rep. 1508 (D.C. Mont. 1978) (apparently not reported in Federal Supplement).

Ambiguous Insurance Policy: Summary judgment on a claim for loss by theft of a commercial carpet cleaner was improperly granted defendant insurer when the policy of insurance was ambiguous as to exclusions from coverage. The particular exclusionary clause was subordinate to the general intent of the contract. Alpha Real Estate Dev., Inc. v. Aetna Life & Cas. Co., 174 M 301, 570 P2d 585 (1977).

Crop Damage — "Valued" or "Open" Policies: Where the basis for recovery under a crop-hail insurance policy was on the acreage insured, stipulation that amount payable should not exceed the "actual loss or damage", read in light of the entire policy, pertained to loss or damage representing the percentage of injury to the crop and not the value of the crop. Billmayer v. Farmers Union Property & Cas. Co., 146 M 38, 404 P2d 322, 20 ALR 3d 916 (1965).

Crop-Hail Insurance — Strict Construction: Crop-hail insurance policy, which required information pertaining to acreage of crop prior to issuance, should be strictly construed against the insurer in determining that value of crop damage was based on percentage of area destroyed rather than on estimated crop value, since policy form was provided by the company. Billmayer v. Farmers Union Property & Cas. Co., 146 M 38, 404 P2d 322, 20 ALR 3d 916 (1965).

Construction of Endorsement Relating to Persons Covered: Endorsement on insurance policy limiting aircraft insurance to named person and anyone else having certain number of hours of flying time and proper certification was construed against the insurer to mean that the named insured was at all times covered while others who flew the craft had to be certified also in order to be covered by the policy. Ins. Co. of N. Am. v. Butte Aero Sales & Serv., 243 F. Supp. 276 (D.C. Mont. 1965), distinguished in Bequette v. Nat'l Ins. Underwriters, Inc., 429 F2d 896 (1970).

Delinquent Premium Payment — Strikes to Essence of Contract: Contracts of insurance, like other contracts, must be construed according to the terms which the parties have used, to be taken and understood, in the absence of ambiguity, in their plain, ordinary, and popular sense; the condition in a policy of life insurance that the policy shall cease if the stipulated premium shall not be paid on or before the day fixed is of the very essence and substance of the contract, against which even a court of equity cannot grant relief. Conlon v. N. Life Ins. Co., 108 M 473, 92 P2d 284 (1939).

Agent's Knowledge of Defect: The agent of an insurance company at the time he wrote a policy insuring the owner of a city building against public liability for injuries suffered therein provided the building was in the care of but a single tenant knew that the premises were occupied by several tenants. The agent's knowledge was imputable to the insurer, his principal; therefore, in the absence of misrepresentations and concealment on the part of the insured, the breach of the single tenancy clause did not void the policy. Curtis v. Zurich Gen. Accident & Liab. Ins. Co., Ltd., 108 M 275, 89 P2d 1038 (1939).

Willful Act Exclusion Not in Policy: Where a fire insurance company did not except liability for loss incurred through the burning of the insured property by the insured himself while insane, as it could have done, it could not, in reliance on section 40-604, R.C.M. 1947 (since repealed), declaring that the insurer is not liable for a loss caused by the willful act of the insured, assert that it was entitled to an equitable setoff. Hier v. Farmers Mut. Fire Ins. Co., 104 M 471, 67 P2d 831 (1937).

Construction Against Insurer: A policy of insurance must be liberally construed in favor of the insured and strictly construed against the insurer. Ins. Co. of N. Am. v. Butte Aero Sales & Serv., 243 F. Supp. 276 (D.C. Mont. 1965); Wills v. Midland Nat'l Life Ins. Co., 108 M 536, 91 P2d 695 (1939); DeVore v. Mut. Life Ins. Co., 103 M 599, 64 P2d 1071 (1937).

Application for Insurance Not Part of Contract: The application for a fire insurance policy may not be considered as a part of the contract unless incorporated therein by reference or otherwise. Schroeder v. Metropolitan Life Ins. Co., 103 M 547, 63 P2d 1016 (1936).

COVERAGE OF PUNITIVE DAMAGES

Contract Language Not Preventing Payment of Punitive Damage Award — No Public Policy Against Payment: Following the award of general, special, and punitive damages to the plaintiff for injuries suffered in a car accident, the insurance company refused to pay the punitive damages, whereupon the plaintiff sued the insurance company. On appeal from a summary judgment for the plaintiff, the Supreme Court held that the language in the insurance policy relied on by the company to deny the payment of punitive damages was ambiguous and should be construed against the company to allow payment of those damages. The court also held, under the rationale of First Bank (N.A.) Billings v. Transamerica Ins. Co., 209 M 93, 679 P2d 1217, 41 St. Rep. 573 (1984), that there was no public policy against the payment of punitive damages by an insurance company. Fitzgerald v. W. Fire Ins. Co., 209 M 213, 679 P2d 790, 41 St. Rep. 654 (1984).

Insurance Coverage of Punitive Damages — Not Violative of Public Policy: Punitive damages may be insured against in Montana, and insurance coverage of such damages does not violate public policy. First Bank (N.A.) of Billings v. Transamerica Ins. Co., 209 M 93, 679 P2d 1217, 41 St. Rep. 573 (1984).

Punitive Damages for Intentional Act — Auto Insurance: Where the owner of a car, arriving on the scene of an accident involving his car driven by another with his permission, intentionally tampered with physical evidence at the scene and was thereafter found liable for punitive damages by a state court, but neither he nor the driver were liable for actual damages, under the policy in question the insurance company was not liable for either the punitive damages or attorney's fees. Lee v. St. Farm Mut. Auto. Ins. Co., 39 St. Rep. 1761 (D.C. Mont. 1982) (apparently not reported in Federal Supplement).

Part Law Review Articles

Insurance Coverage of Punitive Damages in Montana, Stanaway, 46 Mont. L. Rev. 77 (1985).

33-15-301. Requiring standard provisions — waiver.

Compiler's Comments

1995 Amendment: Chapter 379 in (1), after "provisions", inserted "and benefits"; in (1)(a), after "provision", inserted "or benefit"; in (2), after "policy", inserted "or certificate" and in three places, after "provision", inserted "or benefit"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-15-302. Policy must contain entire contract.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Case Notes

Statutory Cap on County Liability — Insurer Must Pay for Excess Damages if Provided in Insurance Contract — Insurance Contract Silence on Statutory Cap Not Bar to Plaintiff's Recovery. Daniels v. Gallatin County, 2022 MT 137, 409 Mont. 220, 513 P.3d 514.

Reformation of Insurance Policy Not Permitted — Clear and Explicit Language Used — Lack of Due Diligence in Discovering Error Not Justifying Reformation: An insurer attempted to reform an insurance policy on the ground that the policy should not cover property near a structure that was specifically exempted from the policy. However, the policy specifically included property within 1,000 feet of other insured property, including property around the exempted structure. The District Court applied 33-15-302 and determined that it was prohibited from reforming insurance policies. On appeal, the Supreme Court also declined to reform the contract, as the language was clear and explicit, due diligence would have uncovered the error, and the insurer failed to establish that its insurance policy expressed something other than what the parties mutually intended. Lincoln County Port Authority v. Allianz Global Risks US Ins. Co., 2013 MT 365, 373 Mont. 60, 315 P.3d 934.

Assurance of Coverage Made by Agent — Coverage Not Extended Beyond Policy Terms:

Defendant insurer claimed that plaintiffs' claims in a 2002 action were barred by collateral estoppel and res judicata because of the prior holding in Lee v. USAA Cas. Ins. Co., 2001 MT 59, 304 M 356, 22 P3d 631 (2001). Applying the test in Haines Pipeline Constr., Inc. v. Mont. Power Co., 265 M 282, 876 P2d 632 (1994), for determining whether collateral estoppel barred the present action because it might be a relitigation of the 2001 case, the Supreme Court disagreed with defendant's assertion. Plaintiffs had not previously litigated whether defendant had a duty to defend and a duty to indemnify Hoss because that issue did not arise until defendant refused to indemnify Hoss and Hoss confessed judgment. Also, the issue of whether defendant had a duty to defend and a duty to indemnify Hoss was different from the issue in the 2001 case, which concerned whether Lee was a named insured under Hoss's policy, thereby entitling Lee to underinsured motorist benefits. Because the present issue was never litigated, there was never a final judgment on the merits, so defendant's collateral estoppel and res judicata arguments were inapplicable. Lee v. USAA Cas. Ins. Co., 2004 MT 54, 320 M 174, 86 P3d 562 (2004).

Lee was injured in an accident in Louisiana while in a taxi and filed an underinsured motorist (UIM) claim pursuant to coverage provided by USAA Casualty Insurance Co. (USAA) on two vehicles that she jointly owned, with Hoss contending that she was entitled to stack coverage under the policies. Although USAA initially indicated that Lee would be entitled to UIM coverage because she was a co-owner of the vehicles, the insurer later changed its position and denied coverage on grounds that because Lee was not a named insured and as a matter of law not a "covered person" under the relevant policy provisions, USAA had no obligation to treat her as such. The District Court granted summary judgment for USAA, concluding that Lee was not an insured for purposes of UIM coverage under the express language of Hoss's policy and that Lee could not benefit from a policy to which she was not a party. On appeal, Lee contended that she was entitled to a new trial because USAA's claim adjuster initially indicated that Lee would be covered, USAA should be bound by that admission of coverage, and USAA's first answer should be a binding judicial admission as a matter of law. The Supreme Court relied on DeJonge v. Mut. of Enumclaw, 843 P2d 914 (Oreg. 1992), and Shows v. Pemberton, 868 P2d 164 (Wash. Ct. App. 1994), in holding that an assurance made by an insurance agent that a particular coverage exists, in the absence of an ambiguity, does not create or extend coverage beyond the covered risks expressly identified or excluded in the policy. Assurances or representations made as a result of confusion and misfeasance by an insurance agent do not render an otherwise unambiguous policy ambiguous as a matter of law. As a general rule, the agent's conduct may be offered to demonstrate that an ambiguity exists, particularly from the perspective of a reasonable insurance consumer. Nevertheless, in some limited instances, an assurance of coverage by an agent that conflicts with an unambiguous policy may afford an insured relief under the theories of waiver or equitable estoppel. Lee pursued the theory of estoppel in this case, but failed to prove that she relied on the agent's representation of coverage to her detriment. A judicial admission is not binding unless it is an unequivocal statement of fact, rather than a conclusion of law or the expression of an opinion. USAA admitted no material fact of consequence to the case. Thus, neither the agent's representations that coverage existed nor the first answer admitting that Lee was covered served as sufficient grounds for enforcing the policy in her favor or for estopping USAA from denying coverage. Lee v. USAA Cas. Ins. Co., 2001 MT 59, 304 M 356, 22 P3d 631 (2001), distinguishing Dion v. Nationwide Mut. Ins. Co., 22 Mont. Fed. Rep. 225 (D.C. Mont. 1997), and Boyle v. Nationwide Mut. Ins. Co., 25 Mont. Fed. Rep. 446 (D.C. Mont. 1999).

No Contract by Estoppel: Where a person claiming to be insured had received no premium notices, paid no premium, or received no policy for 3 months, the rule that insurance contracts cannot be created by estoppel was particularly applicable. St. Farm Mut. Auto. Ins. Co. v. Lee, 35 St. Rep. 1508 (D.C. Mont. 1978) (apparently not reported in Federal Supplement).

Application for Insurance Not Part of Contract: The application for a fire insurance policy may not be considered as a part of the contract unless incorporated therein by reference or otherwise. Schroeder v. Metropolitan Life Ins. Co., 103 M 547, 63 P2d 1016 (1936).

33-15-303. Contents of policies in general — identification.

Compiler's Comments

1995 Amendment: Chapter 379 in (3), at end of first sentence, deleted "together with the year of adoption of the form", inserted second sentence concerning identifying forms with a designating letter or figure, and in third sentence, after "terms", deleted "and year of adoption" and at end inserted "and the revision date must be noted next to the designating letters"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 deleted former (3) that read: "Subsections (1) and (2) of this section shall not apply as to surety contracts or to group insurance policies"; and made minor changes in style.

1981 Amendment: Deleted "domestic" before "insurers" near the beginning of (4).

Case Notes

Construction of Policy — Contract: Under section 40-402, R.C.M. 1947 (predecessor to this section, since repealed), a contract of fire insurance must be construed as any other contract; the policy must specify the matters enumerated and this information must be supplied to the insurance company by the applicant for the policy. Stevens v. Steck, 101 M 569, 55 P2d 7 (1936).

Contractual Elements Contained in Fire Insurance Policy: A fire insurance policy, specifying the parties between whom the contract was made, the rate of premium, the property insured, the risk insured against, and the period of time during which the insurance was to continue, contained all the elements of a policy of insurance required by the provisions of section 40-402, R.C.M. 1947 (predecessor to this section, since repealed). Baker v. Pa. Fire Ins. Co., 81 M 271, 263 P 93 (1928).

33-15-308. Explanation of charges.

Compiler's Comments

1999 Amendment: Chapter 134 in introductory phrase at beginning substituted "An insurer" for "A disability insurer", substituted "membership contracts, or subscriber contracts for delivery in this state on or after January 1, 2000, and that limits payment" for "or contracts, that issues policies, certificates, or contracts for delivery in this state, or that renews, extends, or modifies policies, certificates, or contracts on or after October 1, 1995, shall include in the disability policies, certificates, or contracts definitions for terms that limit payment", and at end inserted "or other comparable terms shall include, displayed in the schedule page or elsewhere in the policy, certificate, membership contract, or subscriber contract"; inserted (1) requiring definition and explanation of terms; inserted (2) requiring description of database if used; in (3) at beginning substituted "a statement informing the insured" for "These definitions must inform the insured" and at end substituted "membership contract, or subscriber contract" for "or contract"; and made minor changes in style. Amendment effective October 1, 1999.

33-15-315. Validity of noncomplying forms.

Case Notes

Provisions of Insurance Statutes to Be Read Into Policy — Arguably Nonconforming Suicide Payment Provision Not Voided: An insurance policy contained a suicide exclusion permitted by 33-20-121, but the payment provided to the beneficiary arguably did not comply with 33-20-121(2). The beneficiary contended that a proper application of this section to the policy resulted in invalidating the entirety of the suicide exclusion. The District Court determined that this section required that the Insurance Commissioner's reserve value provision of 33-20-121(2) be read into the policy. The plain meaning of this section is to give effect to insurance policies and provisions to the fullest extent possible by reading statutory provisions into the policy to achieve full compliance with the insurance code. Nothing in this section supports applying it to invalidate policy provisions. The suicide exclusion contemplated some payment to the beneficiary in an amount much reduced from the total benefit amount. The arguably nonconforming payment provision did not render any portion of the policy invalid. Instead, the 33-20-121(2) provision was included in the policy so as to bring the entirety of the exclusion and the policy itself into compliance with the code. In light of the fact that the amount tendered to the beneficiary exceeded the amount required by utilizing the methodology contained in 33-20-121(2), the District Court did not err in concluding that the subsection must be read into the policy to effectuate the provisions clearly contemplated by the parties. Sagan v. Prudential Ins. Co. of America, 259 M 506, 857 P2d 719, 50 St. Rep. 902 (1993).

33-15-316. Construction of policies.

Case Notes

No Duty to Defend Against Slander Claim When Claim in Underlying Lawsuit Undated — Not Alleged to Have Been Committed During Insurance Policy Periods. Farmers Ins. Exch. v. Minemyer, 2023 MT 138, 413 Mont. 60, 532 P.3d 837.

Earth Movement Exclusion — Commercial General Liability Policy — Coverage for Homeowner's Claims Reversed — Policy Clearly and Unambiguously Excluded Coverage — Reasonable Expectations Doctrine Not Applicable. Loendorf v. Employers Mut. Cas. Co., 2022 MT 143, 409 Mont. 248, 513 P.3d 1268.

Fire Disposing of Felled Trees That Posed Risk to Vehicles — No Coverage for Damages Caused by Fire Under Motor Vehicle Policy: The neighbor of the plaintiff felled dead trees on his property because he was concerned they might fall on his work vehicles. After felling the trees, he burned them and ashes from that fire caused another fire that damaged the plaintiff's property. The neighbor conceded negligence and assigned the rights to his insurance to the plaintiff, who then sued the defendant insurance company. Although the defendant denied coverage, the District Court granted summary judgment in the plaintiff's favor. On appeal, the Supreme Court reversed, holding that the fire did not result from the maintenance of the neighbor's vehicles. The Supreme Court explained that the neighbor's decision to burn the trees after they had been cut and no longer posed a threat to his vehicles was not an inherent part of vehicle maintenance. Assoc. Dermatology & Skin Cancer Clinic of Helena, P.C. v. Mtn. West Farm Bureau Mut. Ins. Co., 2017 MT 30, 386 Mont. 298, 389 P.3d 1027.

Exhaustion of Other Coverage Requirement Before Benefits Triggered — No Violation of Public Policy on Subrogation: A driver was in an accident while driving a business vehicle insured by the business through an insurer, and the driver incurred medical and other expenses. The driver sought recovery of medical payment benefits and underinsured motorist benefits through another insurer, her personal insurance company, Safeco. The driver argued that Safeco's policy unlawfully subrogated her claims because it required medical payment coverage and underinsured motorist coverage to be exhausted under any other applicable policy before triggering Safeco's concurrent duty to pay benefits. The Supreme Court held that this case was not a de facto subrogation case because Safeco had not attempted subrogation and had not rejected the driver's insurance claims. Safeco's policy merely stated that it was only a secondary insurer and that excess benefits would be available only after the first insurer had paid full benefits. Scheafer v. Safeco Ins. Co., 2014 MT 73, 374 Mont. 278, 320 P.3d 967.

Port Authority Insured Under County Insurance Policy — Extrinsic Evidence Considered — Policy Construed Against Drafter — Insurer Not Immune From Suit as Reinsurer: After a port authority building was destroyed by a fire, the port claimed that it qualified as an insured under a county insurance company policy that included county members and any other county entities that receive insurance through a county joint insurance authority. The insurance company claimed that the language in the policy did not extend to county entities such as the port. Additionally, the insurance company claimed that it was a reinsurer and therefore it was improper for the port to bring a direct claim against it. The Supreme Court held that the port qualified as an insured under terms of the policy and that a direct claim was proper. In reaching a conclusion that was contrary to the language of the policy, the court gave meaning to the entire contract, considered extrinsic evidence, and construed ambiguous language in the policy against the insurer as the drafter. In determining that a direct claim was proper, the court reasoned that the port dealt directly with the insurance company, and therefore the insurer was an excess insurance carrier, rather than a reinsurer. Lincoln County Port Authority v. Allianz Global Risks US Ins. Co., 2013 MT 365, 373 Mont. 60, 315 P.3d 934.

"Each Person" Limit Covers Direct and Derivative Damages for Loss of Father — District Court Reversed and Remanded: Heath and Vail and their 3-month-old daughter were injured in an automobile accident. Heath died of his injuries and his father (Frank) sued to recover damages on behalf of Heath's estate and his granddaughter who suffered bodily injury in the accident. The defendant insurer paid Heath's estate $50,000 under the policy's "each accident" limit. The insurer also paid Heath's estate the "each person" policy limit of $50,000 and paid the medical expenses of the daughter. Frank sought additional wrongful death and survivorship benefits for the daughter to be paid out of the policy's $50,000 "each person" limit. The insurer refused and the District Court awarded partial summary judgment to the insurer. The Supreme Court reversed and remanded. The language of the policy defining bodily injury applied to those persons who did not sustain bodily injury. The daughter sustained bodily injury; thus, the policy was interpreted to mean that the "each accident" limit of $100,000 was available and the "each person" limitation of $50,000 applied separately to Heath's claim and to the daughter's claim. St. Farm Mut. Auto. Ins. Co. v. Freyer, 2010 MT 191, 357 Mont. 329, 239 P.3d 143, following Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 Mont. 281, 68 P.3d 703, and distinguishing Allstate v. Wagner-Ellsworth, 2008 MT 240, 344 Mont. 445, 188 P.3d 1042.

Additional Insured Endorsement in Primary Policy — Duty to Defend: An employee of a subcontractor was injured while installing fireproofing in a building. The general contractor's liability insurer (defendant insurer) tendered a defense to the subcontractor under the indemnity clause in the subcontract and to the general contractor's insurer (plaintiff insurer) under the commercial general liability policy, so the question arose whether plaintiff insurer had a duty to defend pursuant to the commercial liability under which the general contractor qualified as an additional insured. Plaintiff insurer argued that because the general contractor could not shift responsibility to the subcontractor for the general contractor's statutory duty to maintain general job site safety, plaintiff insurer had no duty to defend or cover the loss. The District Court disagreed and granted summary judgment to defendant insurer pursuant to the additional insured endorsement. Plaintiff insurer appealed, but the Supreme Court affirmed. The court examined the indemnity provision in the subcontract and determined that the indemnity provision was not sufficiently clear and unequivocal in its intent to indemnify the general contractor for its own negligence, so the court then turned to the language of the additional insured endorsement. The general contractor was clearly named as an additional insured on a primary noncontributing basis, so plaintiff insurer's policy was clearly intended to be primary. Because plaintiff insurer had a duty to defend the general contractor, the District Court did not err in granting defendant insurer's motion for summary judgment and holding that plaintiff insurer breached its duty to defend. United Nat'l Ins. Co. v. St. Paul Fire & Marine Ins. Co., 2009 MT 269, 352 M 105, 214 P3d 1260 (2009), following Slater v. Cent. Plumbing & Heating Co., 275 M 266, 912 P2d 780, 53 St. Rep. 132 (1996). See also Staples v. Farmers Union Mut. Ins. Co., 2004 MT 108, 321 M 99, 90 P3d 381 (2004).

No Coverage for Personal Property in Insured Company's Care for Damage by Company Employees: Plaintiff company serviced oil wells, and during the removal and reinstallation of the rods and tubing of a well, company employees dropped a piece of new tubing, causing about $30,000 of damage to the tubing and the tubing anchor. The tubing did not belong to plaintiff, but was provided by a separate company and was onsite when the work began. Plaintiff filed an insurance claim with defendant insurer, but the claim was denied on grounds that the tubing was in plaintiff's care, custody, and control and that such an occurrence was not covered by plaintiff's commercial general liability policy, which excluded coverage for property damage to personal property in plaintiff's care, custody, and control. The District Court agreed and granted summary judgment for the insurer. Plaintiff appealed on grounds that a separate policy provision canceled out the exclusion by providing that plaintiff's employees were not considered insureds for purposes of property damage to property in plaintiff's care, custody, and control, and because the damage was caused by the employees, the exclusion did not apply. Interpreting the policy as a whole, the Supreme Court affirmed. Because plaintiff was a corporation, it could act only through its employees, who were acting within the scope of their employment, so the property was also in plaintiff's care, custody, and control and was therefore excluded from coverage. Lambert Well Serv., Inc. v. Wellington Specialty Ins. Co., 2008 MT 212, 344 M 204, 186 P3d 1255 (2008).

Insurance Subrogation Prior to Insured Being Made Whole — Requirements for Class Action Certification Met: Ferguson sought class action certification of a case involving an insurer that subrogated against the tortfeasor's insurance carrier before Ferguson was made whole. The District Court denied certification on grounds that under Swanson v. Hartford Ins. Co. of the Midwest, 2002 MT 81, 309 M 269, 46 P3d 584 (2002), the legal duty for insurers taking subrogation eliminated the common issue and on grounds that because Ferguson's case required fact-specific determinations of "made whole" entitlements, class action was not appropriate. On appeal, the Supreme Court reversed. As in Sieglock v. Burlington N. Santa Fe Ry. Co., 2003 MT 355, 319 M 8, 81 P3d 495 (2003), the District Court failed to consider whether the plaintiff class presented common issues of fact, particularly the common issues of fact arising from the insurer's subrogation program. The existence of the well-established duty on the part of the insurer to make the insured whole prior to subrogation, as set out in Swanson, did not eliminate the common fact issue of whether the insurer programmatically breached that duty, and when a common scheme of deceptive conduct is alleged, common questions of law or fact will exist (see Powers v. Gov't Employees Ins. Co., 192 FRD 313 (S.D. Fla. 1998)). Thus, Ferguson satisfied the commonality issue. The District Court further erred in reasoning that Ferguson failed to demonstrate that any common issues predominate over questions affecting only individual members of the affected class. Ferguson's challenge was not to an error in the insurer's application of the "made whole" rule to any given insured, but rather to the procedures of a program of subrogation that systematically deprived all class members of any consideration of their "made whole" rights, so predominance was not required for class certification in this case. Lastly, the efficient remedy of classwide declaratory relief was appropriate because the size of the average claim was so small that relief for the average class member was not economically available outside of class litigation. The case was remanded for further proceedings as a class action. Ferguson v. Safeco Ins. Co. of America, 2008 MT 109, 342 M 380, 180 P3d 1164 (2008).

Insurance Policy Ambiguous Regarding Coverage of Property of Policyholder's Lessee Construed in Favor of Providing Coverage: Kenney leased some space in a commercial building to Lammers. A fire in the building destroyed much of Lammers' property. Kenney had an insurance policy for the building covering personal property in rooms provided by Kenney as a landlord. As a lessee, Lammers sought coverage under the policy, but the insurer did not deny coverage and did not pay any part of Lammers' loss, so Lammers filed a complaint seeking damages from the insurer and several other defendants. The District Court found that the policy was not clear whether only Kenney's property was covered or whether the property of lessees was also covered and granted summary judgment for the insurer. Lammers appealed. The Supreme Court held that the policy was ambiguous and should therefore be construed against the insurer and in favor of providing coverage. Summary judgment was improper, and the case was reversed and remanded for further proceedings. Lammers v. Moun, 2008 MT 47, 341 M 406, 177 P3d 1026 (2008).

No Right to Subrogation From Insurance Loss Payee — Summary Judgment Proper: The Montana Petroleum Tank Release Compensation Board reimbursed a gas station owner $254,842 for expenses incurred in an environmental remediation, and the Board then sought to exercise subrogation rights against the owner's insurer and a lessee for reimbursement. The District Court granted summary judgment to the insurer after finding that the Board had no right of subrogation through the gas station owner, and the Board appealed. The Supreme Court noted that the gas station owner was at most a loss payee under its insurance policy, so the Board had no right of subrogation through the owner or through the corporation established to run the gas station, which had no part in funding the remediation or obligation to pay for any part of the remediation. The Board could not show that the owner's insurer was unjustly enriched by failing to pay a claim that the insurer did not owe, so subrogation did not apply. Thus, the Board had no right to subrogation through either the owner or the lessee to recover damages from the owner's insurer, and summary judgment was proper. Mont. Petroleum Tank Release Comp. Bd. v. Capitol Indem. Co., 2006 MT 133, 332 M 352, 137 P3d 522 (2006), distinguishing Swingley v. Riechoff, 112 M 59, 112 P2d 1075 (1941).

Insurance Coverage for Intentional Dumping of Hazardous Waste Denied Under Policy Exclusion: For more than 3 years, defendant disposed of hazardous waste solvents into a sanitary landfill. The solvents migrated into the ground water, and neighbors sued defendant for personal injury and property damages. Defendant sought coverage from plaintiff insurer to remediate the damages and costs for the third-party suits, and the insurer eventually sought a declaration that it owed no duty to provide insurance coverage and defense costs for the environmental claims. Defendant's insurance policy contained a pollution exclusion that barred coverage for environmental damage unless the pollution was sudden or accidental. The District Court granted plaintiff summary judgment, and defendant appealed. The Supreme Court applied general rules of contract law, strictly construing the policy provisions in favor of defendant, but affirmed summary judgment absent ambiguity in the policy language. Under the policy, the initial disposal, rather than the migration and any resulting damages, had to be sudden and accidental in order to fall within the pollution exclusion clause. Defendant's routine intentional disposal of waste over a period of years could not be considered sudden or accidental, so defendant was unable to establish that the claims fell within the basic scope of coverage. Thus, plaintiff had no duty to defend defendant, and summary judgment for plaintiff was proper. Travelers Cas. & Sur. Co. v. Ribi Immunochem Research, Inc., 2005 MT 50, 326 M 174, 108 P3d 469 (2005). See also Bozeman v. AIU Ins. Co., 272 M 349, 900 P2d 929 (1995), and Makarka v. Great Am. Ins. Co, 14 P3d 964 (Alaska 2000).

Wendell Test Applied to Determination of Whether Bodily Injury Caused by Accident "Resulting From the Use" of Insured Vehicle: Defendant's son was injured in a hunting accident after riding to the hunt in a vehicle owned by Wajahuski and insured by plaintiff. The insurance policy provided for coverage resulting from the use of a vehicle. The District Court applied the test in Wendell v. St. Farm Mut. Auto. Ins. Co., 1999 MT 17, 293 M 140, 974 P2d 623 (1999), and held that the automobile insurance policy did not provide liability coverage with respect to defendant's claims for bodily injury. Defendant appealed. The Supreme Court affirmed. Even though the Wendell test was originally applied in an uninsured motorist case, the expansive, fact-intensive test also applied here. The phrase "resulting from the use" was ambiguous, so the contract terms were construed in a light most favorable to the insured or other beneficiary. The accident could have occurred in any location, regardless of how the hunters reached their destination. The fact that that particular vehicle was used to transport the hunters and assist in the hunt provided no connection between the use of the vehicle and the hunting accident. Thus, the District Court did not err in holding that the personal injuries were not caused by an accident resulting from the use of the insured motor vehicle. St. Farm Mut. Auto. Ins. Co. v. Ferrin, 2002 MT 196, 311 M 155, 54 P3d 21 (2002).

Two Rules of Subrogation — Colorado Subrogation Choice of Law Provision Violative of Montana Public Policy: The Swansons were part-time residents of Montana and Colorado. They paid their automobile insurance premiums through Hartford Insurance Company (Hartford) in Colorado, but were involved in an accident in Montana with a truck owned by USF/Reddaway, incurring over $50,000 in medical expenses. Their policy included: (1) a Colorado statutorily required type of no-fault insurance called personal injury protection, or PIP, under which Hartford was required to pay certain losses and expenses, including medical expenses, lost wages, and rehabilitation expenses; (2) a subrogation clause granting Hartford the right to recover any payments made under PIP in the event that the Swansons recovered damages from the party responsible for the bodily injury; and (3) a choice of law provision providing that any dispute concerning the denial or delay of PIP benefits or subrogation rights would be governed by Colorado law. Hartford paid some claims but denied others, and later learned that USF/Reddaway's insurer intended to pay the Swansons, so Hartford decided to pursue subrogation to recover money that it had paid. The Swansons settled with USF/Reddaway's insurer, but USF/Reddaway's limits of liability exceeded the amount of the settlement. The Swansons eventually sued Hartford for breach of contract and unfair claim settlement. Hartford had the case removed to Montana federal District Court, which certified three questions to the Montana Supreme Court. The Supreme Court cited Skauge v. Mtn. St. Tel. & Tel., 172 M 521, 565 P2d 628 (1977), for the doctrine that an insured must be made whole before an insurer may assert its subrogation rights, which means that not only must the insured recover all losses, but costs of recovery as well, including attorney fees and litigation costs. The 1997 amendments to 33-23-203 allowed for reasonable subrogation, but did not include a specific "made whole" requirement. Nevertheless, common law and the statute jointly establish two rules of subrogation. First, an insured should not receive duplicate payments for the same element of loss, and second, the insurer may not assert subrogation rights until the insured has been fully compensated for damages, regardless of any contract language to the contrary. The Colorado provision providing a choice of law would allow subrogation before the insured is made whole, and is therefore a violation of Montana public policy. Swanson v. Hartford Ins. Co. of the Midwest, 2002 MT 81, 309 M 269, 46 P3d 584 (2002), following Youngblood v. Am. St. Ins. Co., 262 M 391, 866 P2d 203 (1993). See also DeTienne Associates Ltd. Partnership v. Farmers Union Mut. Ins. Co., 266 M 184, 879 P2d 704 (1994).

Plain Language of Policies Providing Insurance on Rental Car Construed — Primary Versus Excess Coverage: Hudson used a credit card to rent a 1995 Ford Mustang convertible from P.C. Rental, Inc. (P.C.). Three days later, Hudson lost control of the car, resulting in damages rendering the vehicle a total loss. At the time of the accident, P.C. had a commercial lines policy through Empire Fire and Marine Insurance Company (Empire) that included liability and physical damage coverage. Hudson did not own a vehicle and was not covered under a personal policy, but auto rental insurance was provided by the company whose credit card Hudson used for the rental. Empire paid P.C. the agreed actual cash value of the vehicle, minus a $1,000 policy deductible, then sold the damaged vehicle for salvage and received an additional $1,108. The credit card company, Visa U.S.A. (Visa), also paid P.C. about $7,800 to cover P.C.'s deductible and lost rental fees. P.C. then brought a breach of contract action against Hudson for failing to return the vehicle in the same condition in which it was rented, as required by the rental agreement. Hudson alleged that Chase Manhattan Bank (Chase), as issuer of the credit card, was responsible for damages sustained to the rental car under the terms of the rental insurance. Hudson subsequently filed for bankruptcy and assigned all rights in the third-party action against Chase to P.C. P.C. then amended the complaint to include the credit card company as defendant, alleging that the rental insurance provided coverage on a 24-hour basis for damage to a car rented with the credit card up to the full value of the car. Visa denied P.C.'s allegations regarding the rental insurance, alleged that Visa had met its obligations under the policy by covering P.C.'s deductible and lost rental fees, and moved for summary judgment, which was granted. The District Court concluded that Hudson was an insured under the liability policy provided to P.C. by Empire and thus Empire was not entitled to subrogate against its own insured. The court determined that because both policies provided damage coverage for the same vehicle, it was necessary to look to the "other insurance" clauses of the policies. The Empire policy stated that its coverage was primary, while the Visa policy stated that its coverage was excess coverage, so Empire was not entitled to recover any of the amount that it paid to P.C. from Visa. On appeal, the Supreme Court affirmed. Given the nature of the coverage available, no determination of whether Hudson was an insured under Empire's physical damage coverage was necessary or possible under the policies. The District Court did not err when it concluded that, based on the clear language of the policies, P.C.'s physical damage coverage was primary and Visa's rental insurance was excess. P.C. Rental, Inc. v. Chase Manhattan Bank, 2000 MT 106, 299 M 315, 998 P2d 1168, 57 St. Rep. 430 (2000).

"Arising Out of" Ambiguous — Coverage for Liability Not Excluded: Pablos were injured in a vehicle accident involving Moore, who was transporting a landscaping tractor for his employer. The employer was covered by a commercial general liability insurance policy that provided liability insurance for negligent acts of the corporation and its employees. Pablos contended that the employer was negligent in the hiring, training, and supervision of Moore. The employer conceded that the claim arose during the policy period and fell within the definitions of "bodily injury" and "occurrence" and that the policy would provide coverage unless coverage was denied by an exclusion but contended that coverage was excluded under both the exclusion for damages "arising out of" the use of an automobile and the exclusion for damages "arising out of" the transportation of mobile equipment. The District Court held that the term "arising out of" was ambiguous and, construing the instrument against the drafter-insurer, ruled that coverage for Pablos' accident was not excluded under the policy language. Noting that the phrase "arising out of" has been declared ambiguous in another insurance context in Wendell v. St. Farm Mut. Auto. Ins. Co., 1999 MT 17, 293 M 140, 974 P2d 623 (1999), the Supreme Court applied a similar rationale to the phrase in both exclusionary clauses at issue in the present case. The phrase was reasonably subject to more than one interpretation and thus ambiguous. Pursuant to Head v. Cent. Reserve Life of N. America Ins. Co., 256 M 188, 845 P2d 735, 50 St. Rep. 20 (1993), if the terms of an insurance policy are ambiguous, obscure, or open to different constructions, the construction most favorable to the insured or other beneficiary must prevail, particularly if an ambiguous provision attempts to exclude the liability of the insurer. Here, the policy did not clearly and unambiguously exclude coverage for the theories of liability pleaded by Pablos, and the District Court's summary judgment that coverage was owed on Pablos' claims for negligent hiring, training, and supervision of Moore was affirmed. Pablo v. Moore, 2000 MT 48, 298 M 393, 995 P2d 460, 57 St. Rep. 231 (2000), following Marquis v. St. Farm Fire & Cas. Co., 961 P2d 1213 (Kans. 1998).

Insured Entitled to Recover Attorney Fees, Costs, and Interest, Including Prejudgment Interest, Before Insurer May Recover Pursuant to Subrogation Rights: Park Plaza Hotel suffered extensive property damage when a train wrecked in subzero weather, causing a power outage during which the hotel's pipes burst. The hotel's insurer paid the hotel the limits of its policy, and the hotel sued the railroad for damages in excess of the policy limits. The insurer joined in the suit. The hotel cross-claimed against its insurer for attorney fees and costs expended in recovering its excess damages from the railroad. The Supreme Court affirmed the lower court and held that the insured must recover all that it has lost, including attorney fees and costs expended in an attempt to recover sums over and above those received under its policy with the insurer, before the insurer may recover pursuant to its subrogation rights. The Supreme Court also held that the insurer was obligated to pay any prejudgment interest to which the lower court determined the insured was entitled. DeTienne Associates Ltd. Partnership v. Farmers Union Mut. Ins. Co., 266 M 184, 879 P2d 704, 51 St. Rep. 730 (1994), following and clarifying Skauge v. Mtn. St. Tel. & Tel. Co., 172 M 521, 565 P2d 628 (1977).

Chocolate Inventory Destroyed — Contamination Exclusion Inapplicable: After discovering that a worker had been exposed to hepatitis, the owners of Helena's Parrot Confectionery (the Parrot) immediately alerted the city health department. When the state Department of Health and Environmental Sciences (now Department of Public Health and Human Services) subsequently placed an embargo on all candy, the Parrot, without testing for contamination, voluntarily destroyed its existing inventory and submitted a claim for the loss to its insurance company. Citing the high probability of contamination and the contamination exclusion in the insurance contract, the District Court granted summary judgment in favor of the insurance company. Adopting the contamination definitions in Am. Cas. Co. of Reading, Pa. v. Myrick, 304 F2d 179 (5th Cir. 1962), Hi-G, Inc. v. St. Paul Fire & Marine Ins. Co., 391 F2d 924 (1st Cir. 1968), and Auten v. Employers Nat'l Ins. Co., 722 SW 2d 468 (Tex. App. 1987), the Supreme Court reversed, holding that absent proof of "actual" contamination, the contamination exclusion does not bar coverage for the Parrot's losses. Duensing v. Traveler's Co., 257 M 376, 849 P2d 203, 50 St. Rep. 316 (1993).

No Subrogation Against Family Members: The Bottomly family owned a recreational cabin. On the mother's death, she left the cabin to two of her sons, Richard and James, with the understanding that all family members were entitled to use the cabin. Richard purchased insurance for the dwelling. While a third brother, Gene, was using the cabin, it burned down. The insurer paid Richard for the damage and sought to recover the amount paid from Gene. In a case of first impression, the Supreme Court adopted the view that it was reasonable for the insured to believe that his policy covered the other family members and that therefore the other members qualified as insureds under the policy for subrogation purposes. Cont. Ins. Co. v. Bottomly, 250 M 66, 817 P2d 1162, 48 St. Rep. 861 (1991).

33-15-317. Insurance coverage of punitive damages.

Compiler's Comments

Applicability: Section 5, Ch. 627, L. 1987, provided: "This act applies to claims arising after the effective date of this act, except that subsections (6), (7), and (8) of 27-1-221 apply to trials that begin after the effective date of this act whether or not the claim arose after the effective date of this act." Effective October 1, 1987.

Law Review Articles

Insurance Coverage of Punitive Damages in Montana, Stanaway, 46 Mont. L. Rev. 77 (1985).

33-15-318. Safety program requirement in workers' compensation policies.

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

33-15-321. Life and disability insurance policy language simplification.

Compiler's Comments

Source: Section 1, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-322. Purpose.

Commission Notes

In establishing minimum standards, it is recognized that certain terminology used in policies is difficult or impossible to restate in simplified language. This is because there are no suitable alternatives to necessary medical terminology, other insurance words of art, and statutory or regulatory language requirements. It is not the intention of this Act to preclude the use of such terminology or to penalize insurance companies for its continued use.

The purpose of this Act is to improve policy language in order to facilitate the insured's understanding of the coverages provided. The purpose is similar to that of the Outline of Coverage requirements found in Section V of the NAIC Model Individual Accident and Sickness Insurance Minimum Standards Act [not adopted in Montana] and in similar acts adopted in some jurisdictions. Consequently, any state adopting this Act may desire to review the continued necessity of other requirements such as the Outline of Coverage.

Compiler's Comments

Source: Section 2, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-323. Definitions.

Commission Notes

This Act is intended to apply to the certificates, policies or contracts of fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, dental care plans, vision care plans, pharmaceutical plans, health maintenance organizations, and all similar type organizations. In order to include such organizations, each state should properly identify them in accordance with that state's statutory terminology or by specific statutory citation.

Depending upon state law, insurance department jurisdiction, and other factors, separate legislation may be required. In any event, such proposed legislation should provide that the particular terminology used by these plans and organizations (e.g., contracts; certificates; subscribers; member) may be substituted for, or added to, the corresponding terms used in this Act.

Compiler's Comments

Source: Section 3, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-324. Application — exceptions.

Commission Notes

This Act is intended to apply to annuities except those annuities exempted by [subsection (1)(c)]. In those states where "annuities" are not included in the term "insurance" appropriate language should be added to include those contracts within the scope of the Act.

The words "approved or permitted to be issued" as used in [subsection (1)(d)] to describe policy forms are intended to include all policy forms whether they are affirmatively approved, "deemed" approved, or merely permitted to be issued after having been on file for a prescribed period of time.

Compiler's Comments

Source: Section 4, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-325. Minimum policy language simplification standards.

Commission Notes

[Subsection (1)(b)] is not intended to include minor instructions concerning the preparation of an application within the type size requirement (e.g., "Last Name", "RFD or Box Number.")

[(2)(f)(ii)]: A State adopting this Act may desire to review the necessity of including the Individual Accident and Sickness Uniform Policy Provision Law within the requirements of this Act until the NAIC has adopted a simplified uniform version of the UPPL. [Annotator's Note: Montana has adopted the Individual Accident and Sickness Uniform Policy Provision Law (UPPL) in Title 33, ch. 22, part 2. The NAIC has adopted a simplified version of the UPPL, but it has not been adopted in Montana.]

[(3)]: While the Flesch "reading ease" test (Rudolph Flesch, the Art of Readable Writing 1949, as revised 1974) is the basic test set forth in this Act, it is recognized that other tests are also in wide use and should be permitted to be used under this Act. Subsection [(3)] is intended to permit the use by insurers of other tests approved by the Commissioner for use as an alternative to the Flesch test, but is not intended to permit the adoption by the Commissioner of another test to the exclusion of the Flesch test or as an addition thereto.

Compiler's Comments

Source: Section 5, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-326. Construction — time period.

Compiler's Comments

Source: Section 6, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-327. Powers of the commissioner.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 7, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-328. Approval of forms.

Compiler's Comments

Source: Section 8, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-329. Applicability schedule.

Commission Notes

The time periods proposed are thought to accommodate most situations and are recommended for inclusion in the bill. Other effective dates may be inserted based upon the ability of the Insurance Department to process the work load and the ability of the industry to totally redraft its policy portfolio.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 9, Life and Health Insurance Policy Language Simplification Model Act, drafted by the National Association of Insurance Commissioners, 1977.

33-15-333. Short title.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-334. Purpose.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

Case Notes

Technical Violation of Property and Casualty Insurance Policy Language Simplification Act May Not Be Used to Invalidate Unambiguous Policy Exclusions — Impermissible Increase of Risk Assumed. High Country Paving, Inc. v. United Fire & Cas. Co., 2022 MT 72, 408 Mont. 202, 507 P.3d 1165.

33-15-335. Definitions.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-336. Applicability.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 157, L. 2023. Amendment effective April 19, 2023.

1999 Amendment: Chapter 472 inserted (2)(e) regarding certain large commercial risks; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-337. Minimum policy simplification standards.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

Case Notes

Technical Violation of Property and Casualty Insurance Policy Language Simplification Act May Not Be Used to Invalidate Unambiguous Policy Exclusions — Impermissible Increase of Risk Assumed. High Country Paving, Inc. v. United Fire & Cas. Co., 2022 MT 72, 408 Mont. 202, 507 P.3d 1165.

33-15-338. Powers of commissioner.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

Case Notes

Technical Violation of Property and Casualty Insurance Policy Language Simplification Act May Not Be Used to Invalidate Unambiguous Policy Exclusions — Impermissible Increase of Risk Assumed. High Country Paving, Inc. v. United Fire & Cas. Co., 2022 MT 72, 408 Mont. 202, 507 P.3d 1165.

33-15-339. Compliance with other statutorily required language.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

33-15-340. Liability and coverage not imputed.

Compiler's Comments

Applicability: Section 10, Ch. 416, L. 1993, provided that this section applies to all policies issued or renewed on or after April 1, 1996.

Part 4

Application, Issuance, Renewal, Assignment, and Return

33-15-402. Application as evidence — copy to insured — alteration.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Application Not Incorporated by Reference: In an action to recover on a life insurance policy [which may have been a forerunner to an industrial life insurance policy — annotator], the application for the policy could not, under law predating this section, be considered as a part of the contract unless incorporated therein by reference or otherwise. Schroeder v. Metropolitan Life Ins. Co., 103 M 547, 63 P2d 1016 (1937).

33-15-403. Representations in applications — benefit precluded and rescission allowed if fraudulent or material.

Compiler's Comments

2019 Amendment: Chapter 315 in (2) after "incorrect statements" substituted "preclude a benefit and allow rescission" for "do not prevent a recovery" and at end substituted "if" for "unless"; in (2)(a) and (2)(b) at beginning inserted "the representations are"; inserted (2)(d) regarding the nature of the questions in application and applicant's responses; inserted (4) regarding jurisdiction of the district courts to hear disputes of parties to an insurance policy regarding rescission of a policy or contract; inserted (5) preserving the powers and authority of the commissioner; and made minor changes in style. Amendment effective May 7, 2019.

Preamble: The preamble attached to Ch. 315, L. 2019, provided: "WHEREAS, the National Association of Insurance Commissioners estimates that insurance fraud costs over a hundred billion dollars per year and is financially damaging to not only insurance companies, but also to insurance consumers; and

WHEREAS, this act restores the right of rescission of insurance contracts in the event of fraud, material misrepresentation, and other circumstances, to combat the detrimental effect insurance fraud has on the economy and society as a whole."

1997 Amendment: Chapter 416 inserted (3) making subsection (2)(c) inapplicable to nonrenewal or discontinuation of specified group health insurance; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1 [33-15-403], 5 through 8, 17 through 40, and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Case Notes

General 350
Misrepresentations Decided Under Repealed "Warranty" Theory 352

GENERAL

Rescission of Insurance Policy — Not Permitted Under Pre-2019 Version of Statute: An insurer rescinded the professional liability insurance of a father-son law firm after the father admitted to embezzling funds from clients over a period of years. The law firm was the "named insured" on the policy, while the father and son were listed as "insured attorneys." The son requested extended coverage as an innocent insured under the Extended Reporting Period Endorsement provision of the contract, but the insurer gave notice that it was rescinding the policy and refused the son's request to buy extended coverage. The Supreme Court found that while the insurer was within its rights to prevent recovery under the policy by the law firm and the father, it had no right under 33-15-403 to rescind the policy as to the son. The Supreme Court noted that its conclusion overruled precedent that had previously and incorrectly inserted the remedy of rescission into 33-15-403. (However, see Ch. 315, L. 2019, wherein the Legislature amended 33-15-403 to expressly allow rescission under an insurance policy or contract.) ALPS Property & Cas. Ins. Co. v. McLean & McLean, PLLP, 2018 MT 190, 392 Mont. 236, 425 P.3d 651.

Admission of Medical Records to Determine Whether Material Misrepresentation Made on Application — No Prejudice: When applying for credit life insurance, plaintiff's husband, Clarence, indicated that he was in good health. Less than 1 year later, Clarence died, and plaintiff submitted an insurance claim, but the claim was denied and the policy was rescinded, so plaintiff sued. At trial, the District Court admitted Clarence's medical records. Plaintiff argued that the records were allowed without foundation showing that the records existed when Clarence applied for the insurance or that the records were relied on by the parties. The court concluded that it was for the jury to decide whether Clarence made a material misrepresentation that would justify defendant's action in denying the claim and rescinding the policy. The Supreme Court affirmed, holding that the District Court did not act arbitrarily or exceed the bounds of reason in admitting the records for jury inspection and that plaintiff failed to identify any prejudicial information in the records or show how introduction of the records harmed the case. Williams v. Union Fidelity Life Ins. Co., 2005 MT 273, 329 M 158, 123 P3d 213 (2005). See also Lopez v. Josephson, 2001 MT 133, 305 M 446, 30 P3d 326 (2001).

Evidence Related to Plaintiff's Bankruptcy Properly Precluded From Trial Regarding Plaintiff's Purchase of Credit Life Insurance: When Clarence and Barbara purchased a vehicle, the dealer offered credit life insurance as part of the transaction. Clarence died within 1 year of the purchase, but the insurer denied a life insurance claim and rescinded the policy. Barbara sued the insurer for fraud and bad faith. At trial, defendant sought to introduce evidence regarding plaintiff's bankruptcy, but the trial court granted Barbara's motion in limine excluding the bankruptcy evidence, and defendant appealed. The Supreme Court found no evidence that the trial court acted arbitrarily or exceeded the bounds of reason in granting the motion in limine, and the trial court was affirmed. Williams v. Union Fidelity Life Ins. Co., 2005 MT 273, 329 M 158, 123 P3d 213 (2005). See also Lopez v. Josephson, 2001 MT 133, 305 M 446, 30 P3d 326 (2001).

Inapplicability of Filed Rate Doctrine to Claim of Violation of State Law Regarding Credit Life Insurance: Plaintiff asserted that defendant's credit life insurance application was ambiguous, entitling plaintiff to judgment as a matter of law when defendant rejected plaintiff's claim for benefits and rescinded plaintiff's certificate of insurance. Defendant claimed that any ruling that plaintiff was entitled to judgment as a matter of law based solely on the application form would violate the filed rate doctrine set out in Keogh v. Chicago & NW. Ry. Co., 260 US 156 (1922). The doctrine arose from a concern that deviation from a rate filed with a federal regulatory agency can result in imposition of civil or criminal sanctions by a court without sufficient knowledge or expertise in the ratesetting process of a regulatory agency, and the purpose of the doctrine is to ensure that rates are reasonable and evenly applied. The doctrine initially applied to common carriers but was later applied to insurance. The Montana Commissioner of Insurance asserted that the doctrine has not been extended to include insurance forms approved by a state agency and that the state's regulatory authority does not preclude a claim against an insurer for a violation of state law. The Supreme Court agreed. The filed rate doctrine did not apply in this case because there was no evidence that defendant's rates were set, reviewed, or filed by a federal regulatory agency, so defendant was not immunized under the doctrine for a violation of state law. Nevertheless, plaintiff was not entitled to summary judgment because a material question of fact remained as to whether plaintiff's husband misrepresented his health when filling out the application and, if so, whether the misrepresentation was material. Additionally, judgment as a matter of law was not appropriate because there was sufficient evidence to submit the issues to the jury. Williams v. Union Fidelity Life Ins. Co., 2005 MT 273, 329 M 158, 123 P3d 213 (2005).

Material Misrepresentation on Application for Credit Life and Disability Insurance — Denial of Coverage Warranted: Schlemmer applied to the North Central Life Insurance Company (North Central) for credit life and disability insurance but misrepresented his health history. If he had answered correctly on the application, he would have been ineligible for the insurance. Nevertheless, he averred by his signature that he understood the form and that his application statements were true, so the policy was issued. Schlemmer later filed a claim for disability payments. North Central investigated, found that Schlemmer had been treated within the previous 2 years for hypertension, chronic obstructive lung disease, and disease or disorder of the kidneys, contrary to his statements in the application, and denied the claim and refunded Schlemmer's premiums. Schlemmer sued for damages, claiming that the application and underwriting procedures used by North Central violated 33-18-201, commonly known as the unfair claims settlement practices law, breached the covenant of good faith and fair dealing, and constituted fraud. Schlemmer also maintained that the District Court erred in failing to rule on whether North Central's agent had knowledge of Schlemmer's condition, which might have created a question of material fact. The Supreme Court affirmed the District Court's rulings that: (1) Schlemmer's claim of ignorance of the contents of the written application could not prevail because the application language was clear and unambiguous and Schlemmer did not deny signing it; (2) Schlemmer materially misrepresented his health on the application; (3) the material misrepresentation was legally sufficient to allow North Central to deny coverage under the policy; and (4) Schlemmer's argument that North Central's agent knew or should have known about Schlemmer's health was mere speculation insufficient to create an issue of fact to defeat North Central's properly supported motion for summary judgment. Further, the Supreme Court declined to consider Schlemmer's argument that the misrepresentation could not serve as a basis to rescind the policy because he did not apply for benefits until more than 2 years after applying for the insurance, pursuant to 33-22-205, because Schlemmer never raised the issue at the District Court level. Schlemmer v. N. Cent. Life Ins. Co., 2001 MT 256, 307 M 203, 37 P3d 63 (2001).

Rescission for False Information Not Breach: After purchasing a nursing home insurance policy for her husband, plaintiff filed a claim for benefits after his death that was denied. The policy was rescinded with premiums refunded. Alleging a breach of contract, plaintiff filed an action requesting punitive damages. The District Court granted summary judgment for the insurance company, ruling that in direct response to an insurance policy qualifying question about memory loss, plaintiff provided false information by not initially disclosing that her husband had been treated for organic brain deficit and failed to correct the error when the insurance company returned the application with the false information clause highlighted. On appeal, the Supreme Court affirmed the District Court decision, ruling that rescission of the insurance contract after discovering the false answer did not constitute breach of contract. Steinback v. Bankers Life & Cas. Co., 2000 MT 316, 302 M 483, 15 P3d 872, 57 St. Rep. 1336 (2000).

Policyholder's Failure to Disclose Alcoholism Not Material Misrepresentation: An applicant for an insurance policy answered "no" to a question on the insurance form as to whether he had visited a physician for any purpose during the previous 3 years. In fact, the applicant had been treated for alcoholism and depression. Subsequently, the insurance company alleged that the insured committed suicide and the insurance company refused to pay on the policy. The insured's death was later ruled not a suicide. The Supreme Court held that if alcoholism was a material concern of the insurance company, then it should have specifically requested information concerning alcohol use on the application form as it did with respect to other medical conditions, such as heart or kidney disease. Schneider v. Minn. Mut. Life Ins. Co., 247 M 334, 806 P2d 1032, 48 St. Rep. 224 (1991).

Estoppel by Misrepresentation: Estoppel has reference to the conduct of the person estopped. Estoppel has no application where the omissions of the party claiming estoppel brought about the problem. First Sec. Bank v. Goddard, 181 M 407, 593 P2d 1040 (1979), followed in McGregor v. Cushman/Mommer, 220 M 98, 714 P2d 536, 43 St. Rep. 206 (1986).

Unintentional Misrepresentation — Bona Fide Belief in Good Health: Deceased who had been continually reassured by his doctor that his health was improving and who was himself encouraged as to his condition did not misrepresent his health so as to preclude recovery on credit life policy by declaring "to the best of my knowledge and belief I am now in good health". Lentz v. Prudential Ins. Co. of Am., 164 M 197, 520 P2d 769 (1974).

Misstatements Material to Acceptance — Driving Record: Where application for automobile insurance contained nonfraudulent misstatements as to driving history on one insured that were material to acceptance of risk and hazard assumed by plaintiff and insurer's agent received both letter from insurer rejecting application and notice of accident involving automobile to be insured on same day, insurer was not liable. Am. Indem. Co. v. Elespuru, 302 F. Supp. 878 (D.C. Mont. 1969).

Waiver of Misrepresentation — Subsequent Acceptance of Premiums: Motorist injured by negligence of insured was entitled to recover under insured's policy even though insurance company was entitled to rescind policy for violation of this statute since insurance policy was effective until rescinded and since subsequent to discovering insured's fraud, insurance company acted affirmatively in accepting premium payments and paying other claims arising out of same accident, all of which constituted implied waiver of right to rescind. McLane v. Farmers Ins. Exch., 150 M 116, 432 P2d 98 (1967).

MISREPRESENTATIONS DECIDED UNDER REPEALED "WARRANTY" THEORY

Actual Fraud — No Premium Refund: Where there was actual fraud on the part of the decedent in securing membership in a mutual benefit association by reason of false statements made by him in his application therefor, which prevented the membership from ever becoming effective, the association was not required to repay to the beneficiary a certificate fee of $5 and several monthly assessments of $1 each paid by decedent prior to his death, as it would have been in case of defaults other than those caused by fraud. McDonald v. N. Benefit Ass'n, 113 M 595, 131 P2d 479 (1942).

Actual Fraud — Voidable Policy: If the insured intentionally conceals facts which are material or makes false representations with reference to them, intending to mislead the insurer, he is guilty of actual fraud, which, at the option of the latter, avoids the policy. McDonald v. N. Benefit Ass'n, 113 M 595, 131 P2d 479 (1942), followed in Tyler v. Fireman's Fund Ins. Co., 255 M 174, 841 P2d 538, 49 St. Rep. 958 (1992); Pelican v. Mut. Life Ins. Co., 44 M 277, 119 P 778 (1911).

Fraud as Question of Fact: Actual fraud is always a question of fact for the jury, under 28-2-404, and unless the condition of the evidence is such that only one inference may be drawn from it, the court may not direct a verdict. McDonald v. N. Benefit Ass'n, 113 M 595, 131 P2d 479 (1942).

Agent's Knowledge of Misrepresentations: Where the agent of an insurance company, at the time he wrote a policy insuring the owner of a city building against public liability for injuries suffered therein provided the building was in the care of but a single tenant, knew that the premises were occupied by several tenants, his knowledge was imputable to the insurer, his principal, and in the absence of misrepresentations and concealment on the part of the insured, the breach of the single tenancy clause did not void the policy. Curtis v. Zurich Gen. Accident & Liab. Ins. Co., Ltd., 108 M 275, 89 P2d 1038 (1939).

Effect and Construction of Warranty: A "warranty" in a life insurance policy must be part and parcel of the contract, made so by express agreement of the parties upon the face thereof; and where a warranty is found to have been violated, it is unnecessary to determine the legal effect of an alleged fraudulent representation appearing in the application for the policy. Schroeder v. Metropolitan Life Ins. Co., 103 M 547, 63 P2d 1016 (1936).

Evidence of Fraud — Death Certificate: Where attending physician recited in death certificate that he treated insured some 6 weeks before date of policy and cause of death was heart disease and acute bronchitis and beneficiary adopted the certificate in making proof of death, the certificate makes out a prima facie case of the truth of the statements and is sufficient evidence to establish breach of warranty. Schroeder v. Metropolitan Life Ins. Co., 103 M 547, 63 P2d 1016 (1936).

Misrepresentation as to Interest: Since under section 40-308, R.C.M. 1947 (since repealed), a fire insurance policy had to specify the interest of the assured, it was material to the validity of the policy and concealment or misrepresentation of such fact rendered the policy void. Stevens v. Steck, 101 M 569, 55 P2d 7 (1936).

Statements as Express Warranties: By section 40-505, R.C.M. 1947 (since repealed), a statement in an insurance policy of a matter relating to the thing insured, or to the risk, as a fact, was made an express warranty, a breach of which in its inception prevented the policy from attaching to the risk. Weyh v. Calif. Ins. Co., 89 M 298, 296 P 1030 (1931).

Refund of Premiums Paid After Policy Voided: In an action to recover back life insurance premiums alleged to have been paid without consideration and under the mistaken idea that the policy was still in force, whereas it had been forfeited for noncompliance with its conditions, the test whether plaintiff can prevail is: could his beneficiary have collected the amount thereof had the insured died in the meantime? Osborne v. Supreme Lodge Ins. Dept., 69 M 361, 222 P 456 (1924).

Material Misrepresentations — Representations Provision in Policy: In his application for a life insurance policy which provided that the statements of the insured, in the absence of fraud, should be deemed representations and not warranties, the applicant represented that the only illness or disease he had had since childhood was a slight cold and that he had consulted or been treated by only one physician for 5 years last past. The evidence showed that 4 months before making these statements on his medical examination he had been treated by two physicians and was present at a consultation respecting his case held between the two and a third, that the treatment was not for a cold but for a serious ulcer of the throat of syphilitic or tubercular nature. Insured died of tubercular laryngitis some 4 months after issuance of the policy. The representations, accepted and acted upon as true by defendant to its prejudice, were as to material facts affecting the risk, intended to mislead and therefore fraudulent, justifying the insurer in avoiding the policy. Williams v. Mut. Life Ins. Co. of New York, 61 M 66, 201 P 320 (1921).

33-15-411. Binders for temporary insurance.

Case Notes

Binder Automatically Void Upon Issuance of Policy — Notice Requirement Inapplicable: Watts, a cantaloupe and grain farmer, applied for insurance to cover his cantaloupe crop by signing an insurance binder. However, when the policy was subsequently issued, coverage of the grain crop was provided, but the reference to coverage of the cantaloupe crop was crossed out. When Watts's claim for hail damage to the cantaloupe crop was denied, Watts sued, alleging breach of contract. The District Court's grant of summary judgment to the insurance company was affirmed. The Supreme Court held that the binder issued to cover Watts's cantaloupe crop was automatically voided upon issuance of the later policy and that expiration of the binder upon issuance of the policy was not a cancellation requiring 10 days' notification. Watts v. Westland Farm Mut. Ins. Co., 271 M 256, 895 P2d 626, 52 St. Rep. 430 (1995).

Oral Contract for Insurance: Since there was no evidence that an automobile insurance agent and his prospective client were dealing for temporary insurance, the case must be judged, not as a possible oral binder, but as one involving a regular insurance policy. Assuming, without deciding, that there may be an oral insurance policy in Montana, it is required by case law that an oral contract must contain the essential elements of a contract. There was no meeting of minds in this case. St. Farm Mut. Auto. Ins. Co. v. Lee, 35 St. Rep. 1508 (D.C. Mont. 1978) (apparently not reported in Federal Supplement).

33-15-412. Delivery of policy.

Case Notes

Issuance of Policy — Right to Recovery: Although this section requires an insurance carrier to issue a copy of its policy to those with an insurable interest, the plaintiffs did not show that the defendant insurer's failure to issue a copy to them materially affected their right to recovery. Dooling v. Perry, 183 M 451, 600 P2d 799 (1979).

33-15-414. Assignment.

Compiler's Comments

2001 Amendment: Chapter 227 inserted (5) prohibiting an insurance producer from having an ownership interest in a policy without permission of the commissioner; and made minor changes in style. Amendment effective October 1, 2001.

33-15-415. Notice of right to return policy.

Compiler's Comments

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-15-416. Dating of insurance applications — antedating prohibited.

Compiler's Comments

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Part 5

Claims and Benefits

Part Case Notes

Insured Innocents Provision Not Applicable When No Policy Coverage Exists: An attorney was sanctioned for discovery abuses in one case and failed to file an answer in another case for the same client, resulting in default judgment being entered against the client. Subsequently, the attorney's firm entered into a contract for professional liability insurance. As part of the firm's application, the attorney signed a document stating that he had no knowledge of any fact, circumstance, act, error, or omission that could reasonably be expected to be the basis of a claim against him. Several months later, the client filed a malpractice claim against the attorney and also named the other attorneys at the firm as defendants. The insurance company filed for declaratory judgment that it did not owe a duty to indemnify because the attorney and firm should have known that there was basis for a potential claim when the contract was entered. The other attorneys in the firm argued that the insurance company should cover the claims against them because they had no knowledge of the alleged malpractice when the contract was entered. The District Court granted summary judgment in favor of the insurance company. On appeal, the Supreme Court affirmed, noting that the other attorneys' argument that they should be covered under the "insured innocents" provision of the contract did not apply to the situation because the claim was not within the scope of the policy's coverage. ALPS Property & Cas. Ins. Co. v. Keller, Reynolds, Drake, Johnson, & Gillespie, P.C., 2021 MT 46, 403 Mont. 307, 482 P.3d 638.

Policy Definitions Conflicting With Incontestability Provision — Assertion of Forman Defense Violative of Montana Law: An insured brought an action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. The agent cross-claimed against the company for indemnity and breach of fiduciary duty, contending that Revere planned to assert the Forman defense in Montana (see Mass. Cas. Ins. Co. v. Forman, 516 F2d 425 (5th Cir. 1975), in which an insurer asserts a legal defense to the incontestability clause based on its definition of sickness as excluding disabilities that manifested themselves prior to the date of issue of the policy). The District Court declined to decide the issue of the legality of Revere's disability policy, holding that Revere was entitled to assert the Forman defense and that any opinion concerning the interpretation of the policy would be an inappropriate advisory opinion. The Supreme Court found that the question of whether the policy definitions conflicted with the statutorily required incontestability clause was a question of law on which Deonier's punitive damages claim rested and thus did not constitute an inappropriate advisory opinion. Because the incontestability clause is required by statute, interpretation of language in the clause must be construed to effectuate legislative intent, not the intent of the parties, and the incontestability clause takes precedence over other language in the policy. In this case, the definitional and coverage provisions purported to limit available coverage to disabilities caused by sickness or disease that first manifested after the date on which the policy was issued and to exclude coverage for preexisting conditions that were not disclosed on the application; at the same time, the incontestability clause barred the insurer from denying coverage because a sickness or physical condition had existed before the date on which the policy was issued, creating a conflict in which the incontestability clause must control. Consequently, Revere's assertion of the Forman defense violated Montana law, and denial of coverage for a disability, whether or not the causative sickness first manifested itself before the policy's date of issue, was barred by the incontestability clause. Deonier & Associates v. Paul Revere Life Ins. Co., 2000 MT 238, 301 M 347, 9 P3d 622, 57 St. Rep. 989 (2000), following Galanty v. Paul Revere Life Ins. Co., 1 P3d 658 (Calif. 2000).

Failure to Promptly Investigate Claims and Coverage — Bad Faith: A jury found no debatable question of insurance coverage. Liability for exercising bad faith was proper when evidence indicated the insurance company failed to promptly investigate insured's claims and coverage by taking 9 months for an investigation that could have been done professionally in 2 weeks, failed to inform insured of potential coverage under an extended benefits policy provision, and failed to provide coverage for large claims after accepting premiums and paying smaller previous claims. Tynes v. Bankers Life Co., 224 M 350, 730 P2d 1115, 43 St. Rep. 2243 (1986).

Waiver of Right to Deny Insurance Coverage — Independent Investigation: Where an insurance company made an independent investigation of the employee status of an insured, found that he was covered, and then later denied coverage to the detriment of the insured, reliance on the investigation constituted waiver of the right to deny coverage even if facts of the employee status were misrepresented. Tynes v. Bankers Life Co., 224 M 350, 730 P2d 1115, 43 St. Rep. 2243 (1986).

Standard of Lawful Basis for Refusal to Decline Payment of Claim — Standard Not Met by Reliance on Inadmissible Evidence: An insurer must meet the standard of a lawful basis for refusal to decline payment of an insured's claim for an insured's loss. Reliance by the insurer on inadmissible evidence of arson by the insured in declining payment of an insured's loss does not meet the standard of a lawful basis for refusal of the insured's claim. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

33-15-503. Forms for proof of loss to be furnished.

Case Notes

Preliminary Proof of Loss — Quantum of Proof Required: Where preliminary proof is required under an insurance policy, the insured is not bound to give such proof as is necessary in a court of justice, the best evidence within his power to give at the time being sufficient to put the insurer upon inquiry to determine whether he is liable. Caldwell v. Wash. First Nat'l Ins. Co., 94 M 431, 23 P2d 257 (1933).

33-15-504. Claims administration not waiver.

Case Notes

CASE DECIDED UNDER THIS SECTION

Waiver of Defects in Proof of Loss: Insurer's receipt and retention for 60 days of statement of loss due to fire constituted waiver of defense that insured failed to provide adequate proof of loss. Staggers v. USF&G Co., 159 M 254, 496 P2d 1161 (1972).

CASES DECIDED UNDER FORMER "WAIVER OF DEFECTS" LAW

Failure to Demand Not a Waiver: The fact that an insurer, even with notice of loss, fails to demand that the insured comply with the stipulation as to proofs of loss does not constitute a waiver unless coupled with other facts calculated to lead the insured to belief that such proofs need not be made. Conlon v. N. Life Ins. Co., 108 M 473, 92 P2d 284 (1939).

Failure to Plead Nonavailability of Proof of Loss Form: Where, in an action on a policy containing provisions for sickness and indemnity for loss of time, claimed forfeited because of nonpayment of premium, plaintiff, prior to passage of this section, claimed that the company waived proof of loss of time by a rider attached to the policy because of its failure promptly to furnish forms on which to make proof, but such failure not being pleaded or proved, there was no foundation upon which the claim of waiver could be based. Conlon v. N. Life Ins. Co., 108 M 473, 92 P2d 284 (1939).

Waiver of Defects in Proof of Loss — Failure by Insurer to Object to Deficiency: Where the insured has attempted to make proof of loss, even though it be insufficient or defective, the burden is cast upon the insurance company to make objection thereto or it will be considered to have waived the defect or insufficiency. Caldwell v. Wash. First Nat'l Ins. Co., 94 M 431, 23 P2d 257 (1933).

Letters Over Period of Time With Insured — Waiver of Proof of Loss: Where a fire insurance company for 9 months after a fire made no specific objection on the ground that the insured had failed to file proof of loss, it waived that requirement of the policy, statements in letters sent to the insured that what was said therein was said "without waiving any of the provisions of the policy", not meeting the requirement of specific objection required by section 40-607, R.C.M. 1947 (since repealed). Altermatt v. Rocky Mtn. Fire Ins. Co., 85 M 419, 279 P 243 (1929).

Defects in Preliminary Proof of Loss — Waiver by Untimely Objection: Where a fire insurance policy required preliminary proofs of loss and they were presented in due time but were defective, such defects were waived by the failure of the insurer to make objection to them within a reasonable time; especially so, where such delay operated to delay the time of payment of the loss or was for such a period as to render it impossible to remedy the defects within the 60-day time limit fixed by the policy. Fed. Land Bank v. Rocky Mtn. Fire Ins. Co., 85 M 405, 279 P 239 (1929).

Complete Investigation by Insurer — Waiver of Failure to Provide Proof of Loss: Failure to furnish proof of a loss by fire as required by the policy was waived under section 40-607, R.C.M. 1947 (since repealed), where the president of a mutual insurance company, after receiving notice of loss, appointed a committee which went to the scene of the fire and did all it would have done under a formal proof of loss duly filed and did not inform the insured that anything further would be required, the claim being rejected for other reasons. La Bonte v. Mut. Fire & Lightning Ins. Co., 75 M 1, 241 P 631 (1925).

Oral Approval of Proof of Loss by Adjuster: Under section 40-608, R.C.M. 1947 (since repealed), defects in proofs of loss sustained by fire could be waived and were waived by an adjuster of defendant insurance company by advising plaintiff that the proofs exhibited to him, after certain amendments made, were "all right". Morrison v. Concordia Fire Ins. Co., 72 M 97, 231 P 905 (1924).

Failure to Disclose Lack of Proof of Loss — Waiver of Requirement: Notwithstanding a clause in a hail insurance policy that defendant company's agents had not the power to orally waive any of its provisions, they could, under section 40-608, R.C.M. 1947 (since repealed), be held to have waived a provision therein for proof of loss by failing to promptly advise the insured, in their negotiations for settlement, that delay in payment of the loss was caused by absence of proof of loss or that the company would rely upon his omission to make the necessary proof. Ames v. Minneapolis Fire & Marine Ins. Co., 69 M 177, 220 P 747 (1923).

Settlement Offer — Construed as Waiver: Where insured had failed to furnish a sworn statement of proof of loss as he was required to do under the provisions of the policy but the company's adjuster notwithstanding such failure had made offers of settlement, defendant waived the requirement even though the policy provided that such act on the part of its adjuster should not constitute a waiver. Pasherstnik v. Cont. Ins. Co., 67 M 19, 214 P 603 (1923).

Notice of Casualty Detailed — Failure to Demand Formal Proof of Loss: When notice of a casualty and proof of resulting death are incorporated in the same communication to the insurer and the proof of the cause of death, with the attendant facts, meets all the requirements of the policy, except that the statement is not as full as it might be, the failure of the insurer to demand more explicit proof is a waiver of his right to thereafter object to its sufficiency. Da Rin v. Cas. Co. of Am., 41 M 175, 108 P 649 (1910).

33-15-511. Exemption from execution of life insurance proceeds.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-15-512. Exemption from execution of proceeds of group life — exception.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-15-513. Exemption from execution of proceeds of disability insurance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-15-514. Exemption from execution of proceeds of annuity contracts — assignability of rights.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 6

Electronic Delivery of Insurance Notices or Documents

Part Compiler's Comments

Effective Date: Section 11, Ch. 369, L. 2015, provided that this part is effective January 1, 2016.

Applicability: Section 12, Ch. 369, L. 2015, provided: "[This act] applies to insurance policies issued or renewed on or after January 1, 2016."

Part 11
Property or Casualty Insurance — Premium Changes, Cancellation, and Claim Information

Part Compiler's Comments

Severability: Section 12, Ch. 120, L. 1987, was a severability section.

33-15-1101. Purpose — applicability.

Compiler's Comments

2003 Amendment: Chapter 501 in (1)(b) inserted exception clause. Amendment effective October 1, 2003.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-15-1102. Definitions.

Compiler's Comments

1991 Amendment: In definition of insurer, at end, inserted "or an unauthorized insurer transacting surplus lines insurance in this state".

Severability: Section 5, Ch. 180, L. 1991, was a severability clause.

33-15-1103. Midterm cancellation.

Compiler's Comments

2005 Amendment: Chapter 263 in (2) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2005.

Case Notes

Purchase of Separate, Specific Motor Vehicle Policy Not Considered to Terminate Coverage as After-Acquired Vehicle Under Prior Policy: Prior to purchasing a Ford Escort, Fitzpatrick had a liability policy (policy one) in effect that provided coverage of $500,000 per occurrence, identified three vehicles as insured, and provided similar coverage for any newly acquired car obtained during the policy period, but only until Fitzpatrick asked for insurance on the newly acquired vehicle and paid any required additional premium or within 30 days of purchase, whichever was shorter. After buying the Escort and within the required time, Fitzpatrick requested a separate policy (policy two) for that vehicle, with coverage of $100,000 per occurrence, but was never billed for any additional premium. Both policies were in effect when Christensen was injured while riding in the Escort. The insurer claimed that $100,000 was available under policy two and tendered that amount to pay health care providers and the various claimants. Christensen asked the District Court to conclude that additional coverage was available under the "after-acquired vehicle" provision in policy one, asserting that both policies should be stacked to provide a total of $600,000 of coverage. The District Court relied on Bramlett v. St. Farm Mut. Auto. Ins. Co., 468 P2d 157 (Kans. 1970), and Beck v. Aetna Cas. & Surety Co., 553 P2d 397 (Colo. 1976), in holding that the purpose of after-acquired vehicle coverage is to provide automatic coverage only until coverage on the new vehicle is obtained, that because a separate, specific policy had been requested, the Escort was not an after-acquired vehicle under policy one, and that therefore coverage should be limited to $100,000. The Supreme Court distinguished Bramlett and Beck because the policy language in those cases was not the same and found the reasoning in Carey v. St. Farm Mut. Ins. Co., 367 F2d 938 (4th Cir. 1966), to be more persuasive. In the present case, the policy did not require Fitzpatrick to elect coverage if more than one policy was applicable, as it did in Bramlett and Beck. Rather, as in Carey, the clear policy language expressly extended coverage to all after-acquired vehicles, provided that notice was timely. Therefore, the District Court erred when it concluded that the purchase of specific coverage under policy two terminated coverage as an after-acquired vehicle under policy one. If other conditions of after-acquired vehicle coverage are met, coverage on the newly acquired vehicle attaches at the time of acquisition and for the policy period unless the insured refuses to pay any additional premium that is requested, which she was not. Further, Fitzpatrick's policy limiting the maximum amount recoverable to the highest applicable limit under any one policy, when more than one company policy applied to the same occurrence, was found to comport with Montana's antistacking provisions in 33-23-203. The highest applicable limit in this case was $500,000 under policy one, of which $400,000 remained, and the case was reversed to make the additional money available. Christensen v. Mtn. W. Farm Bureau Mut. Ins. Co., 2000 MT 378, 303 M 493, 22 P3d 624, 57 St. Rep. 1608 (2000).

Binder Automatically Void Upon Issuance of Policy — Notice Requirement Inapplicable: Watts, a cantaloupe and grain farmer, applied for insurance to cover his cantaloupe crop by signing an insurance binder. However, when the policy was subsequently issued, coverage of the grain crop was provided, but the reference to coverage of the cantaloupe crop was crossed out. When Watts's claim for hail damage to the cantaloupe crop was denied, Watts sued, alleging breach of contract. The District Court's grant of summary judgment to the insurance company was affirmed. The Supreme Court held that the binder issued to cover Watts's cantaloupe crop was automatically voided upon issuance of the later policy and that expiration of the binder upon issuance of the policy was not a cancellation requiring 10 days' notification. Watts v. Westland Farm Mut. Ins. Co., 271 M 256, 895 P2d 626, 52 St. Rep. 430 (1995).

33-15-1104. Anniversary cancellation — anniversary rate increases.

Compiler's Comments

2003 Amendment: Chapter 339 near end of (1) increased time required for insurer to provide notice from 30 days to 45 days. Amendment effective October 1, 2003.

Applicability: Section 10, Ch. 339, L. 2003, provided: "[This act] applies to policies effective on or after October 1, 2003."

33-15-1105. Nonrenewal — renewal premium.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 263 in (2) in first sentence substituted "less than 30" for "less than 10"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 498 inserted (5) defining claim and inquiry, providing that an insurer may not decline or not renew a policy based on an inquiry, providing that an inquiry is not a claim, and prohibiting an insurer from providing the name of an insured making an inquiry to certain organizations. Amendment effective July 1, 2005.

2003 Amendment: Chapter 339 in (1)(a) in second sentence increased time required for insurer to provide notice from 30 days to 45 days; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 10, Ch. 339, L. 2003, provided: "[This act] applies to policies effective on or after October 1, 2003."

1999 Amendment: Chapter 364 inserted (4) prohibiting an insurer from refusing to renew a property and casualty policy because of a single loss unless the insurer previously told the insured that a single loss was a criteria for nonrenewal. Amendment effective October 1, 1999.

Applicability: Section 2, Ch. 364, L. 1999, provided: "[This act] applies to new or renewed property and casualty insurance policies in effect on or after January 1, 2000."

1997 Amendment: Chapter 531 inserted (1)(b) providing that certain electronic forms of notice meet the requirement of a mailed or delivered copy; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-15-1106. Renewal with altered terms.

Compiler's Comments

2003 Amendment: Chapter 339 near end of (1) increased time required for insurer to provide notice from 30 days to 45 days. Amendment effective October 1, 2003.

Applicability: Section 10, Ch. 339, L. 2003, provided: "[This act] applies to policies effective on or after October 1, 2003."

1997 Amendment: Chapter 531 in (1) deleted second through sixth sentences that read: "If the insured has not been so notified, he may cancel the renewal policy within 30 days after receiving the notice. The insurer shall continue coverage for a period of not less than 30 days after mailing or delivery of the notice. If the insured terminates the policy within the 30-day period, the insurer shall calculate the earned premium pro rata based upon the prior policy's rate. The new rate is effective only after the required 30-day notification period has been met. If the insured does not terminate the policy, the premium increase and other changes are effective the day following the prior policy's expiration or anniversary date."

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1991 Amendment: Deleted (2)(a) that read: "(a) the change is a rate or rating plan filed with the commissioner and applicable to the entire classification or classification system to which the policy belongs"; and made minor changes in style.

Case Notes

Policy Modification Reducing Uninsured Motorist Coverage Constituting Less Favorable Terms Requiring Notice to Insured — Adequacy of Notice: Prior to 1996 and in anticipation of Supreme Court antistacking decisions, the insurer converted Robertus's uninsured/underinsured motorist policy to charge Robertus a single premium for all seven of Robertus's vehicles instead of requiring Robertus to pay a separate amount for each vehicle, which resulted in a total coverage of $300,000. However, the insurer did not send a separate notice of the change to Robertus. When Robertus was subsequently injured in one of the vehicles, Robertus sought to recover the total policy amount for all seven vehicles in the amount of $2.1 million, but the insurer agreed to pay only $300,000. Robertus sued on grounds that because the insurer failed to provide notice of the policy change, Robertus was entitled to up to $2.1 million. The District Court held that Robertus was effectively notified of the change because of the significant reduction in the price of the policy and the changes noted on the declarations page. Robertus appealed. The Supreme Court concluded that Robertus would have been entitled to stack the seven policies under the law in effect at the time of the accident and prior to the policy change, that the insurer's attempt to avoiding stacking by revising the policy to reduce Robertus's coverage by nearly $2 million constituted less favorable terms requiring the insurer to provide notice to Robertus pursuant to the 1995 version of 33-15-1106, and that the District Court erred in concluding otherwise. Robertus v. Farmers Union Mut. Ins. Co., 2008 MT 207, 344 M 157, 189 P3d 582 (2008).

Common-Law Action Based on Events Occurring Before Insurance Claim: A renewed liability policy contained a change in an exclusion for pollution incidents. Following that, a claim, and defense of the insureds in a suit against them, for a pollution incident was denied. The insureds sued the insurer for negligence, bad faith, and breach of a fiduciary duty. The District Court granted the insurer summary judgment on the ground that these were common-law tort claims barred by the provision of 33-18-242, which provides that an insured suffering damages from the handling of an insurance claim may sue for breach of contract, for fraud, or under that section, but not under any other theory or cause of action. The Supreme Court reversed on the grounds that the insureds' claims were not for damages resulting from the handling of the claim because the cause of action focused on events that occurred prior to the filing and handling of the claim, that is, the failure to inform the insureds of the policy change, and that the insureds alleged pure common-law claims without adding violations under Title 33, ch. 18, commonly known as the Unfair Trade Practices Act. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

Complaint Claiming Insurer Had Duty to Notify Insureds of Policy Change — Raising Statutory Duty to Inform for First Time on Appeal: Although the insureds did not raise in the District Court the statutory obligation of an insurer to inform an insured of a policy change on renewal of the policy, the insureds' complaint alleged that the insurer had a duty to notify the insureds of the policy change. Thus, the insurer's claim that the statutory obligation could not be raised on appeal because it was not raised in District Court was rejected. The statute was simply legal support for the complaint's claim of duty to notify, not a new liability theory. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

Duty to Inform Insured of Change in Policy Exclusion — Specific Notice as Against Notice by Providing Renewal Policy With the Change: This section provides that if an insurer offers to renew a policy on less favorable terms, the new terms take effect on the policy renewal date only if the insurer mailed or delivered notice of the new terms to the insured at least 30 days (2003 amendment increased notice period to 45 days) before the expiration date. That section required the insurer to inform the insured of the change in pollution coverage exclusion in a liability policy because an insurer has an affirmative duty to provide adequate notice to the insured of changes in coverage. The question whether giving the insured an amended policy that referred to and contained the pollution coverage exclusion change constituted sufficient notice should have gone to trial, and it was reversible error requiring remand of the issue to grant the insurer summary judgment under the general principle that an insured has a duty to read and examine the policy. That principle is not absolute, and the extent of the duty to read the policy depends on what is reasonable under the facts and circumstances of each case. For a renewal policy, the insured's duty to read it may be less than the duty to read the original policy. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

Failure to Inform Insureds of Change in Renewed Policy as Bad Faith: A renewed liability policy contained a change in an exclusion for pollution incidents. Following that, a claim, and defense of the insureds in a suit against them, for a pollution incident was denied. The insurer claimed that the insureds should have read the policy and would have noticed the change if the policy had been read. The insureds claimed that the insurer should have notified the insureds of the change. It was error for the District Court to grant the insurer summary judgment on the insureds' bad faith claim. Under Story v. Bozeman, 242 M 436, 791 P2d 767 (1990), the scope of the tort of bad faith was limited to a contractual setting in which special circumstances exist between the parties and the matter is not otherwise controlled by specific statutory provisions. The court adopted the following five elements for special circumstances: (1) the contract parties are in inherently unequal bargaining positions; (2) the complainant had a nonprofit motive for entering into the contract; (3) ordinary contract damages are inadequate because they do not require the party in the superior position to account for its actions and do not make the inferior party whole; (4) the complainant is especially vulnerable because of the type of harm that it may suffer and of necessity must place trust in the other party to perform; and (5) the other party is aware of the vulnerability. In this case, the Story test was met. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

Failure to Inform Insureds of Change in Renewed Policy as Breach of Fiduciary Duty: A renewed liability policy contained a change in an exclusion for pollution incidents. Following that, a claim, and defense of insureds in a suit against them, for a pollution incident was denied. The insurer claimed that the insureds should have read the policy and would have noticed the change if the policy had been read. The insureds claimed that the insurer should have notified the insureds of the change. It was error for the District Court to grant the insurer summary judgment on the insureds' claim of breach of fiduciary duty. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

33-15-1107. Information about grounds for nonrenewal.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) at beginning substituted "If the insurer or insurance producer receives a written request from an insured within 60 business days from the date on which the insurer mailed a notice of cancellation or nonrenewal to the insured, the insurer or insurance producer shall, within 21 days of receiving the insured's written request, furnish the insured the information that the insurer or insurance producer used to make its decision" for "If an insured questions the facts upon which an insurer's decision to cancel or not renew is based, the insurer shall mail or deliver such information to the insured within 15 working days of receiving a written request from the insured"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-15-1108. Limitation on midterm premium increases.

Compiler's Comments

2019 Amendment: Chapter 62 in (1) near beginning after "subject to this part," deleted "if the insured has prepaid the premium for the insurance policy for a specified period" and near end substituted "contract period" for "period for which the premium has been paid"; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2003.

33-15-1121. Unfair trade practices.

Case Notes

Insurer Wrongfully Refusing Coverage — No Attorney Fees: The insurer argued that it was not obligated to provide coverage for an accident in which its insured was involved. The Supreme Court affirmed the lower court's finding that the insurance company had wrongfully refused to cover the insured's losses but refused to uphold the award of attorney fees. The Supreme Court stated that although attorney fees could be awarded in the absence of a statute or contract provision in cases where the insurer has breached its obligation to defend, the court would not extend the exception to include instances where the insurer wrongfully refused to provide coverage. Yovish v. United Serv. Auto. Ass'n, 243 M 284, 794 P2d 682, 47 St. Rep. 1224 (1990), overruled in Mtn. W. Farm Bureau Mut. Ins. Co. v. Brewer, 2003 MT 98, 315 M 231, 69 P3d 652 (2003). See also Mlekush v. Farmers Ins. Exch., 2017 MT 256, 389 Mont. 99, 404 P.3d 704.

33-15-1126. Disclosure of certain claim information on insurance policies.

Compiler's Comments

Effective Date: Section 4, Ch. 267, L. 2015, provided that this section is effective on passage and approval. Approved April 23, 2015.

CHAPTER 16
RATES — RATING AND ADVISORY ORGANIZATIONS

Part 1
General Provisions

33-16-102. Definitions.

Compiler's Comments

2001 Amendment: Chapter 227 in definition of dividend near end of second sentence of (b) after "insurer's capital" inserted "and surplus". Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 inserted definition of dividend; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-16-103. Application.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 19, L. 1991, repealed sec. 13, Ch. 400, L. 1989, which terminated subsection (6) October 1, 1991. Repealer effective February 11, 1991.

1989 Amendments: Chapter 400 inserted (6) that read: "(6) surplus lines insurance as defined in 33-2-301"; and made minor changes in phraseology.

Chapter 682 at end of (2) inserted exception clause relating to Medicare supplement insurance; and made minor change in phraseology.

Termination Date: Section 13, Ch. 400, L. 1989, provided: "[This act] [33-16-103(6) and 33-16-231 through 33-16-236] [33-16-231 through 33-16-236 now repealed] terminates October 1, 1991."

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

1981 Amendment: Deleted "(6) title insurance."

33-16-104. Payment of dividends, savings, or unabsorbed premium deposits not prohibited or regulated — plan for payment not rating system.

Compiler's Comments

1999 Amendment: Chapter 472 inserted third sentence providing that a payment plan does not relieve the insurer from statutory compliance; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-16-106. Examination by commissioner of rating organizations, admitted insurers, officers, managers, insurance producers, and employees — expense.

Compiler's Comments

1993 Amendment: Chapter 451 near beginning of first sentence of (1)(a), after "commissioner", deleted "shall, at least once every 5 years"; at end of (1)(b) inserted "or by the national association of insurance commissioners"; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-16-111. Issuance of order — suspension or revocation of certificate of authority or license.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-16-112. Failure to comply with order — suspension or revocation of license or certificate.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-16-113. Appeal from order or decision of commissioner.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-16-114. Penalty.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 2
Rates and Rating Plans

33-16-201. Standards applicable to rates.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 129 in (4)(b) at end of second sentence after "claims history" deleted "that is 3 years old or older"; in (4)(c) at end of second sentence after "claims history" deleted "that is 5 years old or older" and in third sentence after "commercial automobile policies" substituted "may not be established based on adverse information contained in an insured's claims history or driving records that is 5 years old or older" for "established for an insured's adverse loss experience may not use more than the most recent 5 years of claims history that is available"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 174 inserted (4)(d) regarding special risk classifications for personal homeowner policies and prohibiting the use of adverse information contained in a claim history that is 7 years old or older; inserted (4)(g) providing definition of personal homeowner policies; and made minor changes in style. Amendment effective October 1, 2021.

Saving Clause: Section 3, Ch. 129, L. 2021, was a saving clause.

Section 3, Ch. 174, L. 2021, was a saving clause.

2011 Amendment: Chapter 239 in (4)(a) in first sentence near middle substituted "rates for separate risks" for "rates for individual risks"; in (4)(b) at end of first sentence inserted "for private passenger automobile policies", at beginning of second sentence substituted "Special risk classifications may be based upon favorable aspects of an insured individual's claims history" for "based upon favorable aspects of an insured's claims history", and in third sentence near end substituted "on adverse information contained in an insured individual's driving record" for "on anything adverse to the insured in a driving record"; inserted (4)(c) concerning commercial automobile policies; inserted (4)(e) defining private passenger automobile policy; and made minor changes in style. Amendment effective October 1, 2011.

1995 Amendment: Chapter 320 inserted fifth sentence in (4) authorizing an insurer to establish special risk classifications to insured based on favorable aspects of claims history; and made minor changes in style.

Administrative Rules

Title 6, chapter 6, subchapter 15, ARM Crop hail insurance.

Title 6, chapter 6, subchapter 21, ARM Discrimination in insurance.

Title 6, chapter 6, subchapter 30, ARM Loss cost advisory rate filings.

33-16-202. Recording and reporting of loss and expense experience.

Compiler's Comments

1995 Amendment: Chapter 379 in (1), near beginning, substituted "may promulgate" for "shall promulgate"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Administrative Rules

ARM 6.6.1505 Crop hail insurers — experience reporting.

33-16-203. Rates filed.

Compiler's Comments

2005 Amendment: Chapter 576 inserted (2)(b) providing a premium reduction for qualified members of the Montana national guard; and made minor changes in style. Amendment effective October 1, 2005.

1987 Amendment: Inserted (2) requiring provision for premium reduction for qualified older drivers.

33-16-204. Review of rates on request by aggrieved person.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-16-205. Noncompliance of rates — notice.

Compiler's Comments

1999 Amendment: Chapter 416 deleted former second sentence that read: "Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under 33-16-206"; and made minor changes in style. Amendment effective October 1, 1999.

33-16-206. Hearings — notice — subject of hearing.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-16-211. Order prohibiting use of rate or rating system.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-16-221. Short title.

Compiler's Comments

Severability: Section 9, Ch. 49, L. 1987, was a severability section.

33-16-222. Requirement for rate reduction.

Compiler's Comments

2005 Amendment: Chapter 469 in (2) at beginning substituted "In addition to providing a premium reduction, an insurer may reimburse the fee for participating in the highway traffic safety program" for "Any discount"; in (3) at beginning inserted "The premium reduction"; and made minor changes in style. Amendment effective October 1, 2005.

33-16-223. Effective period of reduction.

Compiler's Comments

2019 Amendment: Chapter 111 in (1) in first sentence substituted "3-year" for "2-year" and in second sentence substituted "3 years" for "2 years". Amendment effective October 1, 2019.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

33-16-224. Certificate.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-16-230. Rate reduction for military defensive drivers — effective period — exclusions.

Compiler's Comments

2019 Amendment: Chapter 111 in (2) in two places substituted "3 years" for "2 years". Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2005.

Part 3
Insurers Acting in Concert

33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations — agreements to adhere to.

Compiler's Comments

2015 Amendment: Chapter 320 in (1) substituted "33-16-1020 through 33-16-1023, and 33-16-1025 through 33-16-1036" for "33-16-1020 through 33-16-1036"; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

1995 Amendment: Chapter 186 in (1), after "33-16-307", substituted "33-16-1008, and 33-16-1020 through 33-16-1036 may" for "33-16-1005 shall"; and made minor changes in style.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-305. Agreements for apportionment of casualty insurance — approval of commissioner — review of practices of adherents — revocation of approval.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 4
Rating Organizations

33-16-403. Examination of application and investigation of applicant — issuance of license — fee.

Compiler's Comments

2003 Amendment: Chapter 380 at end of (5)(a) required deposit of fee in state special revenue fund to credit of state auditor rather than deposit in general fund. Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 in (1) near beginning substituted "rating or advisory organization" for "rating organization"; in (4) near beginning after "rating" inserted "advisory"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 186 in (1) inserted "pursuant to this part or a workers' compensation advisory organization pursuant to part 10"; in (4), after "rating", inserted "or workers' compensation advisory"; at beginning of (5)(a) inserted exception clause; inserted (5)(b) requiring annual renewal of advisory organization license; and made minor changes in style.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

Part 10
Workers' Compensation Rates and Advisory Organizations

33-16-1002. Applicability of part.

Compiler's Comments

2015 Amendment: Chapter 320 after "plan No. 2" inserted "and plan No. 3" and after "part 22" inserted "and part 23, respectively". Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

1995 Amendment: Chapter 186 at end of section inserted "or related employer's liability insurance, but does not apply to reinsurance".

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1008. Definitions.

Compiler's Comments

2015 Amendment: Chapter 320 in definition of advisory organization in (b) substituted "common control or management" for "common management or control"; in definition of insurer inserted "or plan No. 3, the state fund"; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

1997 Amendment: Chapter 284 in definition of prospective loss costs, in (a) after "loss-based", inserted "and excluding any separately stated policyholder surcharges". Amendment effective January 1, 1998.

Transfer and Credit of Excess Subsequent Injury Funds: Section 6, Ch. 284, L. 1997, provided: "On or before September 1, 1997, the department of labor and industry shall transfer $3.5 million of the funds retained in the fund to the fund in 39-71-201 and credit the amount to offset the insurer's assessment for the administration fund as follows:

(1) plan No. 1, $490,000;
(2) plan No. 2, $612,500; and
(3) plan No. 3, $2,397,500."

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1011. Classification review committee — membership — term.

Compiler's Comments

1995 Amendments: Chapter 186 in (5), in two places, substituted "advisory organization" for "rating organization" and after the first "organization" inserted "designated under 33-16-1023".

Chapter 290 in (1) changed name of Classification and Rating Committee to Classification Review Committee; in (5), in first sentence after "funded", substituted "by" for "from the operations budget of"; and made minor changes in style.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

1993 Amendment: Chapter 528 in (2)(a), at beginning, substituted "two" for "three" and in second sentence, after "The members must", deleted "reside in Montana and shall"; inserted (2)(d) adding one representative of insured employer; in (4), near beginning, inserted reference to subsection (2)(d) and near middle, after "producers", inserted "and employers"; in (5), near beginning, inserted "must be staffed by the rating organization and"; inserted (6) regarding public review of documents; and made minor changes in style. Amendment effective April 24, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 528, L. 1993, provided: "A statement of intent is required because this bill clarifies that the classification and rating committee has the power to promulgate rules as may be necessary for the conduct of the business of the committee. The classification and rating committee is statutorily created, and as the district court held in Cause No. BDV-91-1585, state of Montana, first judicial district, entitled State Compensation Mutual Insurance Fund v. R/E Developers, Inc., decided August 14, 1992, the classification and rating committee is a state agency as defined by 2-3-102. In that decision, the court held that the committee shall promulgate and publish its procedural rules pursuant to the Montana Administrative Procedure Act (MAPA). The committee, however, has never been given either express rulemaking authority by the legislature, nor has it promulgated any procedural rules pursuant to MAPA.

In providing express rulemaking authority to the classification and rating committee, it is the legislature's intent that the business of the committee be conducted pursuant to the requirements of the open meeting laws of the state and that the public be given the opportunity to participate as provided in Title 2, chapter 3, parts 1 and 2. At the same time, as a committee statutorily charged with reviewing classifications and with hearing appeals of classifications of affected insurers and insured employers, the classification and rating committee has historically held informal hearings of classification appeals. This has resulted in an inexpensive and relatively expeditious process for the presentation of grievances. It is the intent of the legislature that this informal process be continued and thus the hearings process itself is exempt from the requirements of MAPA."

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

1989 Amendments: Chapter 613 in (2)(c) changed references to Division of Workers' Compensation, Division, and administrator of the Division to references to state compensation mutual insurance fund, state fund, and executive director of the state fund; and made minor change in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Chapter 713 substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1981 Amendment: Substituted the section, relating to classification and rating committee, for provisions that entitled the division of workers' compensation to membership, without election, on any committee of a rating organization of which it was a member and that set the membership of the committee at three with additional members representing stock insurers (one) and nonstock insurers (one).

Initial Appointments: Section 3, Ch. 114, L. 1981, provided: "When the committee is initially formed in 1981, appointments of members under subsection (2)(a) of 33-16-1007 [renumbered 33-16-1011] shall fill terms as follows: one for 1 year, one for 2 years, and one for 3 years, as designated by the commissioner of insurance."

Administrative Rules

ARM 6.6.8001 Agency organization.

Title 6, chapter 6, subchapter 82, ARM Contested case procedure.

33-16-1012. Functions and powers of classification review committee — hearings — rulemaking.

Compiler's Comments

1995 Amendments: Chapter 186 deleted former (1)(c) requiring committee to "establish the advisory premium rates as provided for in 33-16-1005"; and adjusted subsection references.

Chapter 290 in (1), in introductory clause, changed name of Classification and Rating Committee to Classification Review Committee; in (1)(b), after "establishment", inserted "or revision" and after "classifications" inserted "in accordance with the procedures set forth in Title 2, chapter 4, part 3"; deleted former (1)(c) that read: "(c) establish the advisory premium rates as provided for in 33-16-1005"; in (1)(d), after "filed by", substituted "a policyholder or insurer" for "employers" and after "assigned to" substituted "a policyholder according to rules governing the issuance or application of classifications" for "the employer by an insurer"; substituted (2)(a) regarding conduct of the initial hearing for former language that read: "A hearing conducted by the committee pursuant to subsection (1)(e) must be an informal proceeding as provided in 2-4-604"; substituted (2)(b) regarding an informal contested case proceeding for former language that read: "A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7"; inserted (2)(c) regarding a petition for judicial review; and made minor changes in style.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

1993 Amendment: Chapter 528 in (1)(b), at end, substituted "classifications" for "manual rules and classification"; in (1)(e) deleted last two sentences that read: "The committee may hire hearings officers to conduct hearings regarding such objections and adopt or modify the findings and conclusions of the hearings officers. The committee shall establish procedures for hearing such objections"; inserted (1)(f) authorizing Committee to make rules; inserted (2) concerning conduct of hearings and petitions for judicial review; inserted (3) making Committee subject to Title 2, chapter 3, parts 1 and 2; and made minor changes in style. Amendment effective April 24, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 528, L. 1993, provided: "A statement of intent is required because this bill clarifies that the classification and rating committee has the power to promulgate rules as may be necessary for the conduct of the business of the committee. The classification and rating committee is statutorily created, and as the district court held in Cause No. BDV-91-1585, state of Montana, first judicial district, entitled State Compensation Mutual Insurance Fund v. R/E Developers, Inc., decided August 14, 1992, the classification and rating committee is a state agency as defined by 2-3-102. In that decision, the court held that the committee shall promulgate and publish its procedural rules pursuant to the Montana Administrative Procedure Act (MAPA). The committee, however, has never been given either express rulemaking authority by the legislature, nor has it promulgated any procedural rules pursuant to MAPA.

In providing express rulemaking authority to the classification and rating committee, it is the legislature's intent that the business of the committee be conducted pursuant to the requirements of the open meeting laws of the state and that the public be given the opportunity to participate as provided in Title 2, chapter 3, parts 1 and 2. At the same time, as a committee statutorily charged with reviewing classifications and with hearing appeals of classifications of affected insurers and insured employers, the classification and rating committee has historically held informal hearings of classification appeals. This has resulted in an inexpensive and relatively expeditious process for the presentation of grievances. It is the intent of the legislature that this informal process be continued and thus the hearings process itself is exempt from the requirements of MAPA."

Administrative Rules

ARM 6.6.8001 Agency organization.
ARM 6.6.8101 Adoption of model rules.
Title 6, chapter 6, subchapter 82, ARM Contested case procedure.
ARM 6.6.8301 Establishment of classifications for compensation plan No. 2.
ARM 6.6.8401 Public participation guidelines.

33-16-1020. Competitive market — hearing.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1021. Ratemaking standards — review by commissioner.

Compiler's Comments

2015 Amendment: Chapter 320 in (2)(a) at beginning inserted exception clause; inserted (2)(b) regarding determination of state fund rates as excessive; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

1999 Amendment: Chapter 472 in (3)(a) at end deleted "and"; and in (6) at end after "group" inserted "of". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1022. Dividends — regulation or prohibition.

Compiler's Comments

1999 Amendment: Chapter 472 in (2) inserted second sentence providing that a payment plan does not relieve the insurer from statutory compliance. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1023. Membership in advisory organization.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1025. Interchange of rating plan — data exchange — cooperative action in ratemaking — violation of part.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1026. Rate filings.

Compiler's Comments

1997 Amendment: Chapter 42 in (6) substituted "subsection (1)" for "33-16-1026(1)". Amendment effective March 12, 1997.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1027. Rate filing review.

Compiler's Comments

1997 Amendment: Chapter 531 in (2), near end of first sentence after "within", substituted "30 days" for "10 days".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1028. Improper rates — hearing.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1029. Restrictions on certain insurers — waiting period.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1030. Delay of rates in noncompetitive market.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1031. Consent to rate.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1032. Acts reducing competition prohibited.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1033. Advisory organization — permitted activity.

Compiler's Comments

2015 Amendment: Chapter 320 in (11)(a) in middle and in (11)(b) near end substituted "an insurer" for "a plan No. 2 or plan No. 3 insurer". Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1034. Advisory organization — prohibited activity.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1035. Penalties — suspension of license.

Compiler's Comments

2015 Amendment: Chapter 320 in (1) substituted "33-16-1020 through 33-16-1023 or 33-16-1025 through 33-16-1036" for "33-16-1020 through 33-16-1036". Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

1997 Amendment: Chapter 42 in (1), after "violates", deleted "33-16-1008 or". Amendment effective March 12, 1997.

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

33-16-1036. Appeals from commissioner.

Compiler's Comments

Saving Clause: Section 32, Ch. 186, L. 1995, was a saving clause.

Severability: Section 33, Ch. 186, L. 1995, was a severability clause.

Applicability: Section 34, Ch. 186, L. 1995, provided: "[This act] applies to rate filings by the advisory organization on or after [the effective date of this act] [effective October 1, 1995] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing."

CHAPTER 17
INSURANCE PRODUCERS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS

Chapter Compiler's Comments

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Chapter Case Notes

Insurer's Failure to Provide Policy When Liability Reasonably Clear — Insurer's Failure to Meet Burden Showing Voluntary Cessation to Mootness Doctrine When Policy Subsequently Provided by Another Party: A plaintiff injured by an automobile filed an action after the automobile driver's insurer refused to provide a copy of the policy to the plaintiff, even though the driver's liability was reasonably clear. The plaintiff sought a declaration that the insurer had a duty to provide the injured third party with the policy when liability was reasonably clear and named both the insurer and the driver in the action. The District Court found that the claim had been rendered moot after the driver's attorney provided the plaintiff with a copy of the policy and dismissed the claim against the insurer. On appeal, the Supreme Court held that the District Court erred by failing to apply the voluntary cessation exception to the mootness doctrine and improperly dismissed the insurance company from the action because the plaintiff had provided evidence supporting his claim that it was reasonable to expect a reoccurrence of the same wrong, the insurer did not meet its burden to explain why the challenged conduct could not reasonably be expected to occur again, and the insurer's position that it was withholding the policy information to protect its insureds demonstrates that its actions would likely continue. Wilkie v. Hartford Underwriters Ins. Co., 2021 MT 221, 405 Mont. 259, 494 P.3d 892.

Fixed and Permanent Relationship of Independent Agent — Agent's Knowledge as Company's Knowledge: A person employed by an insurance company for 37 years enjoyed a fixed and permanent relationship as the company's agent and, regardless of the fact that as an independent agent he sold other types of insurance, the agent's knowledge was considered knowledge held by the company. Tynes v. Bankers Life Co., 224 M 350, 730 P2d 1115, 43 St. Rep. 2243 (1986).

Insurance Agent Not Responsible as Principal: There is nothing within this chapter that would take insurance agents out of the general rule in 28-10-702, which sets forth the only conditions wherein an agent would be liable on a contract entered into by him on behalf of his principal (an insurance company), even though the agent here, a finance and insurance agency that sells disability insurance as an agent for an insurance company, is collecting money lent to a customer who was denied coverage by the insurance company and the agency is a beneficiary of the insurance. Budget Ins. & Fin. v. Leighty, 186 M 368, 607 P2d 1125 (1980).

Liability for Issuance of Unauthorized Policy: Under Montana law, insurer was entitled to recover from agency and its parent corporation the entire loss arising from issuance by the agency of unauthorized policy, even though the insurer had received partial reimbursement from its reinsurer. Glacier Gen. Assurance Co. v. G. Gordon Symons Co., 631 F2d 130 (9th Cir. 1980).

Part 1
General Provisions

33-17-101. Scope of chapter.

Compiler's Comments

2001 Amendment: Chapter 106 in (2) inserted exception clause; inserted (3) providing exception for surplus lines producers; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendment: Inserted (1) relating to purpose of chapter; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-102. Definitions.

Compiler's Comments

2021 Amendment: Chapter 501 in definition of administrator inserted (b)(iv) excluding pharmacy benefit managers; and made minor changes in style. Amendment effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

2017 Amendment: Chapter 151 in definition of public adjuster in (a) substituted "retained by" for "employed by" and inserted (b) providing an exclusion from the definition; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendment: Chapter 139 in (2) at end inserted "or a public adjuster". Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2013 Amendments — Composite Section: Chapter 169 at beginning substituted "As used in this chapter" for "As used in this title"; deleted definitions that read: ""Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator", ""Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing", and ""Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities"; in definition of home state substituted "a person licensed under this chapter" for "the insurance producer" and deleted former (b) that read: "(b) is licensed as an insurance producer"; and made minor changes in style. Amendment effective April 9, 2013.

Chapter 245 inserted definitions of exchange and navigator; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 313 inserted definition of home state; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendments — Composite Section: Chapter 140 in definition of adjuster inserted (b)(v) excluding claims examiner as defined under Workers' Compensation Act from the definition; and made minor changes in style. Amendment effective March 30, 2005.

Chapter 469 in definition of consultant at beginning after "means" substituted "an individual" for "a person", after "evaluates" inserted "makes recommendations, or gives advice regarding", and at end after "program" deleted "or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program"; in definition of consultant license after "authorizes" substituted "an individual" for "a person"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 427 inserted definitions of business entity, lapse, negotiate, sell, solicit, suspend, and uniform business entity application; deleted definition of controlled business that read: "“Controlled business” means insurance procured or to be procured by or through a person upon the life, person, property, or risks of the person or the person's spouse, employer, or business"; in definition of individual after “means a” deleted “private or” and after “person” deleted “as distinguished from a partnership, corporation, or association”; in definition of insurance producer near beginning after “33-17-103” substituted “means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance” for former (a) and (b) (see 2003 Session Law for text)

; in definition of license near end of first sentence after “producer for the” substituted “lines of authority” for “kinds of insurance”; in definition of limited lines insurance near middle after “insurance” deleted “defined in 33-1-211 through 33-1-219 or any other line of insurance”; in definition of person after “individual” substituted “or a business entity” for “partnership, corporation, association, or other legal entity”; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

2001 Amendment: Chapter 106 inserted definitions of limited line credit insurance, limited line credit insurance producer, limited lines insurance, limited lines producer, lines of authority, and uniform application; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 531 in definition of administrator inserted (b)(xii) regarding a person appointed as a managing general agent; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 379 in definition of adjuster inserted (d) including licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; in definition of insurance producer, in (a)(ii), substituted “For the purposes of this chapter, the term “managing general agent” has the same meaning as set forth in 33-2-1501” for “For the purposes of this definition, a “managing general agent” is a person who, on behalf of an insurer, exercises general supervision over the business of the insurer in this state or in any other state, including the authority to contract with an insurance producer for the insurer and terminate those contracts”; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1991 Amendment: In definition of insurance producer, in (a)(ii) after “state”, inserted “or in any other state”.

1989 Amendment: Throughout section substituted “insurance producer” for “agent”; deleted definitions of agent, solicitor, and managing general agent; inserted definitions of adjuster license, administrator, administrator license, consultant license, controlled business, individual, insurance producer, license, and person; in definition of public adjuster deleted sentence relating to Commissioner's rulemaking authority regarding public adjusters; and made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendment: Inserted section introductory clause and introductory clause to (1)(a) and (1)(b); in (1)(b), at end, deleted “represented by such agent is not deemed to be an adjuster for the purposes of this chapter”; in (3) and (6) substituted “partnership” for “firm”; deleted former definition that read: “(3) “Life insurance agent” includes also an agent of a life insurer who is or proposes to be licensed as to the same insurer for disability insurance in addition to life insurance and annuities”; and inserted definition of consultant.

1983 Amendment: At end of (1)(a), inserted “or otherwise acts on behalf of the insurer”; inserted (1)(c) defining public adjuster; and inserted (5) defining managing general agent.

Statement of Intent: The statement of intent attached to HB 465 (Ch. 518, L. 1983) provided: “A statement of intent is required for this bill because it delegates rulemaking authority to the insurance commissioner to adopt rules regarding public adjusters. It is the intent of the Legislature that rules adopted by the commissioner be aimed at protecting the consumer who chooses to use the services of a public adjuster. The rules should provide for an examination prior to licensing to ensure the competency of the adjuster. The rules may also provide regulation and bonding requirements to ensure that the consumer contracting with the public adjuster is protected in the event the public adjuster does not fulfill his contractual obligation to the consumer.”

Administrative Rules

Title 6, chapter 6, subchapter 16, ARM Public adjusters.

Case Notes

Adjusters Encompassed in Definition of Administrator — Jury Instruction Proper: At his trial for felony theft by insurance fraud, the defendant objected to a jury instruction offered by the state that an administrator is a person who adjusts or settles claims in connection with life, disability, property, or casualty insurance and therefore was encompassed by the insurance fraud statute. The District Court concluded that independent adjusters were not excluded from the statutory definition of "administrator" and gave the state's instruction. The Supreme Court upheld the jury instruction, holding that the definition of the term states that an administrator may be a person who adjusts or settles claims and noting that while the definition excludes 12 specific categories of persons or entities who are not administrators, independent adjusters are not one of those exclusions. St. v. Schaeffer, 2014 MT 47, 374 Mont. 93, 321 P.3d 809.

Presence of Insurance Adjuster Rather Than Attorney at Prelitigation Mediation Conference Not Violative of Insurer's Duty to Defend: An insurer sent an insurance adjuster rather than an attorney to a prelitigation mediation conference. Defendant contended that this violated the insurer's statutory duty to defend under the policy. The District Court held that the insurer met its obligation by actively participating in the mediation, and defendant appealed. The Supreme Court noted that the duty to defend encompasses functions that can only be fulfilled by a licensed attorney, but that insurance adjusters play a vital role in the resolution of claims prior to the initiation of litigation and further noted that public policy encourages settlements and avoiding unnecessary litigation. Requiring that counsel be retained for informal settlement conferences could hinder the negotiation process and contravene the policy of encouraging out-of-court settlements. The mediation was not part of any judicial proceeding, and the insurer did not violate its duty to defend by sending an insurance adjuster to mediation. The District Court was affirmed. Farmers Ins. Exch. v. Johnson, 2009 MT 442, 354 M 192, 224 P3d 613 (2009).

33-17-103. Exemptions from definition of insurance producer.

Compiler's Comments

2003 Amendment: Chapter 427 in introductory clause after "producer" deleted "contained in 33-17-102"; in (1) at beginning substituted "an individual" for "a person" and after "negotiation" inserted "sale"; in (2) at beginning substituted "an individual" for "a person" and near middle after "if the" substituted "individual" for "employee"; in (3) near beginning after "life insurance" inserted "group property and casualty insurance, group"; in (5)(b) near beginning after "engaged in the" inserted "selling"; inserted (6) providing that an insurance producer does not include an attorney advising a client on general insurance matters; inserted (7) providing that an insurance producer does not include a salaried full-time employee who counsels or advises the employer or the subsidiaries or affiliates of the employer about the life insurance or annuities; inserted (8) providing that an insurance producer does not include a person whose activities in this state are limited to advertising without the intent to solicit insurance; inserted (9) providing that an insurance producer does not include a person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks with respect to an insured with risks located in more than one state that are insured under the contract if the person is licensed in the state where the insured maintains its principal place of business and the contract insures risks located in that state; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

1989 Amendment: In introductory clause substituted "insurance producer" for "agent, managing general agent, and solicitor"; substituted exemptions in (1) through (5) for former (1) through (4) that read: "(1) individuals employed and used by agents for the performance of clerical, stenographic, and similar office duties. Incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or relating to the volume of such applications, insurance, or premiums.

(2) a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a salary basis by the insurer, who solicits only with or in conjunction with duly licensed agents of the insurer;

(3) the attorney-in-fact of a reciprocal insurer or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or

issuing certificates thereunder where no commission is paid for such services"; and made minor changes in phraseology. Amendment effective January 1, 1990.

1983 Amendment: In lead-in, inserted "managing general agent" after "agent" and changed "deemed" to "considered"; and in (2) substituted "a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a salary basis by the insurer" for "the supervising general, state, or special agent or other supervising officer or supervising salaried employee of an insurer".

Part 2

Licensing and Appointment of Insurance Producers and Navigators

Part Compiler's Comments

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

33-17-201. License required of insurance producer — forms — background examinations.

Compiler's Comments

2003 Amendment: Chapter 427 in (1) near beginning after "not" inserted "sell, solicit, or negotiate insurance", after "act as" deleted "or hold himself out to be", and after "producer in this state" deleted "for subjects of insurance located, residing, or to be performed in this state"; in (2) after "continuation" inserted "suspension"; inserted (3) concerning background examinations; deleted former (3) through (6) that read: "(3) Unless licensed as a life insurance producer as required by this section, a person may not in this state solicit life insurance or annuities or procure applications for life insurance or annuities or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to insurance or annuities for fee, commission, or other compensation, other than as a salaried full-time employee counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of the employees.

(4) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated; or

(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of $50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote, 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society.

(6) The commissioner may not grant or extend a license to a person if the license is being or will be used to write controlled business. The commissioner shall consider a license to have been, or intended to be, used for the purpose of writing controlled business if, during any 12-month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee"; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

1989 Amendments: Chapter 285 in (4) inserted reference to 33-2-306.

Chapter 713 throughout section substituted "insurance producer" for "agent or solicitor" and "agent"; deleted former (2) through (4) that read: "(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold a validated appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents"; at end of (2) substituted "a license" for "licenses and appointments"; near middle of (3), before "full-time employee", deleted "bona fide"; inserted (5) relating to representatives of a fraternal benefit society; and made minor changes in phraseology. Section 4, Ch. 713, L. 1989, enacted (6) prohibiting license to write controlled business. Amendment and subsection (6) effective January 1, 1990.

Applicability: Section 16, Ch. 285, L. 1989, provided: "[Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989."

Invalid Amendment of Temporary Section: Section 20, Ch. 713, L. 1989 (effective January 1, 1990), amended a version of 33-17-201 that terminated July 1, 1989, in accordance with sec. 22, Ch. 11, Sp. L. March 1986. The amendments were not codified because the temporary version of the section terminated prior to the amendments becoming effective. Section 20, Ch. 713, L. 1989, also amended the permanent version of 33-17-201 but differently from the temporary version. Amendments to the permanent version were codified.

1987 Amendments: Chapter 409 in (4) inserted "a validated" before "appointment"; in (5) substituted "The commissioner may prescribe by rule and make available the forms" for "The commissioner shall prescribe and furnish forms"; and made minor changes in phraseology.

Chapter 480 inserted (7) providing for restricted license for all-risk federal crop insurance program.

1987 Statement of Intent: The statement of intent attached to Ch. 409, L. 1987, provided: "(1) A statement of intent is required for this bill because:

(a) section 17 [33-17-1103] authorizes the commissioner of insurance to determine by rule the instances in which a property and casualty insurance agent may place insurance coverage with an insurer as to which he is not then licensed or appointed as an agent;

(b) section 18 [33-17-1104 (now repealed)] authorizes the commissioner to determine the instances in which a life or disability insurance agent may place excess or rejected risks in an insurer who has not appointed him as agent; and

(c) section 2 [33-17-201] authorizes the commissioner to prescribe by rule and make available the forms required in connection with an application for an insurance agent license.

(2) The legislature intends that the rules that the commissioner adopts to implement this bill be designed to protect Montana insurance consumers.

(3) The legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority and which permits the commissioner:

(a) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and

(b) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703 [now repealed]."

1986 Amendment: In (4) at end inserted reference to 33-8-213. Amendment terminated July 1, 1989 (sec. 22, Ch. 11, Sp. L. March 1986).

1983 Amendment: Inserted (2) referring to managing general agent.

Case Notes

Placing Business Prior to Issuance of Appointment — Violation: A nonresident agent who solicited and placed business with an insurance company prior to receiving a validated appointment from that company, as required by the Insurance Commissioner, violated this section and was properly fined $250. Trout v. Bennett, 252 M 416, 830 P2d 81, 49 St. Rep. 303 (1992).

Licensing Requirement — Protection of the Public: The licensing requirement is primarily for the protection of the public and is not meant to create private rights between the agent and insurance company. Standard Ins. Co. v. Sturdevant, 173 M 23, 566 P2d 52 (1977).

License — No Rights to Limit Competition Conferred: Licensure of insurance agent is a regulatory matter for protection of public and not a franchise, hence a licensed agent was not a proper party to bring an action against State Auditor to have the Montana license of a foreign insurance corporation declared void. Waite v. Holmes, 133 M 512, 327 P2d 399 (1958).

33-17-210. Centralized producer license registry — rules.

Compiler's Comments

Effective Date: Section 12(1), Ch. 106, L. 2001, provided that this section is effective October 1, 2001.

33-17-211. General qualifications — application for license.

Compiler's Comments

2019 Amendment: Chapter 271 in (3)(e)(ii) after "a certificate of existence or" substituted "registration under 35-14-128 or filed articles of incorporation under 35-14-203" for "authority under 35-1-1312 or filed articles of incorporation under 35-1-220". Amendment effective June 1, 2020.

2009 Amendment: Chapter 271 in (3)(d) and (3)(e)(i) substituted reference to business entity for reference to partnership or corporation; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendments — Composite Section: Chapter 399 in (3)(e)(i) at end inserted "or other organizational documents"; and made minor changes in style. Amendment effective May 3, 2007.

Chapter 507 in (1)(h) at end after "insurance" inserted "except as permitted by 33-20-1501(1)(c)(ii)"; and made minor changes in style. Amendment effective January 1, 2008.

Saving Clause: Section 8, Ch. 507, L. 2007, was a saving clause.

2005 Amendment: Chapter 469 in (1) near beginning of first sentence after "apply" substituted "in a form approved" for "on a form specified"; in (2) in second sentence after "made" substituted "in a form approved by the commissioner" for "using the uniform business entity application"; in (3) in second sentence after "license" substituted "in a form approved" for "on a form specified"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 427 inserted (1)(i) requiring a background examination; inserted (2) concerning an insurance producer's license; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

2001 Amendment: Chapter 7 in (2)(e)(ii) after "existence or" substituted "authority" for "authorization"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 316 in (3) at end of fourth sentence after "33-3-708" substituted "(1)(a)" for "for the license of an insurance producer". Amendment effective January 1, 2000.

1995 Amendment: Chapter 379 in (1)(d) inserted "within 12 months of application"; in (1)(e) inserted "Licenses issued based upon Montana state residency terminate if the licensee relocates to another state"; in (2)(e)(ii), after "existence", inserted "or authorization" and substituted "35-1-220" for "35-2-214"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1991 Amendments: Chapter 368 in (2)(e)(ii), after "issued", inserted "a certificate of existence under 35-1-1312" and near end deleted reference to 35-1-203. Amendment effective January 1, 1992.

Chapter 411 at end of (2)(e)(ii) substituted "filed articles of incorporation under 35-2-214" for "35-2-203". Amendment effective January 1, 1992.

1991 Composite Section: In preparing the composite version of this section, in subsection (2)(e)(ii) the Code Commissioner deleted the phrase "certificate of incorporation under" because Ch. 368 deleted the reference to 35-1-203 and Ch. 411 deleted the reference to 35-2-203, thus the phrase no longer referred to a statute.

1989 Amendments: Chapter 509 in (2) (now deleted), after "insurance", inserted "completion of the required prelicensing education courses"; and made minor changes in grammar and style. Amendment effective January 1, 1990. Amendments were rendered ineffectual by Ch. 713, L. 1989, which rewrote the section in its entirety.

Chapter 713 substituted (1) through (4) relating to application and qualifications (see 1989 Session Law for text) for former (1) through (9) that read: "(1) Application for an agent or solicitor license must be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public.

(2) The commissioner may designate the forms for application for license, which must require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application must state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application must be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a partnership or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the partnership or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application must show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application must also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims applicant to be indebted to it and, if so, the details thereof and the defenses, if any, of the applicant thereto; and whether applicant ever had an agency contract canceled and the facts thereof.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence.

(9) All such applications must be accompanied by the applicable license fee, appointment of agent fee where applicable, and examination fee where an examination is required under 33-17-212, all in the respective amounts stated in 33-2-708." Amendment effective January 1, 1990.

Applicability: Section 11, Ch. 509, L. 1989, provided: "[This act] applies to persons applying for a license as an insurance agent, solicitor (now insurance producer), or enrollment representative on or after January 1, 1990."

1987 Amendments: Chapter 370 near middle of (9), after "where", inserted "an examination is".

Chapter 409 at end of (1) deleted "or other person authorized by law to take acknowledgments of deeds"; in (2) substituted "commissioner may designate the forms" for "commissioner must designate and prepare forms" and deleted question on form relating to purpose for which the license is to be used; in two places in (5) substituted "partnership" for "firm"; and at end of (8) deleted "and whether the applicant will use the license principally for the purpose of insuring the applicant's own risks or interests and those of the applicant's relatives or employer".

33-17-212. Examination required — exceptions — fees.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 592, L. 2023. Amendment effective January 1, 2024.

Severability: Section 9, Ch. 592, L. 2023, was a severability clause.

2013 Amendments — Composite Section: Chapter 324 inserted (2)(b) and (5)(h) regarding prepaid legal insurance examinations and inserted (6)(f) exempting casualty insurance producers that sell prepaid legal insurance from examination requirements in certain cases; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 359 in (6)(d) substituted current language concerning limited lines travel insurance producers for former language that read: "transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents"; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendments — Composite Section: Chapter 271 in (4) near beginning after "applicant is a" substituted "business entity" for "partnership or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 313 in (4) at beginning inserted exception clause and near beginning substituted "business entity" for "partnership or corporation"; deleted former (6)(f) that read: "an individual who, within 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 427 substituted (5)(f) concerning limited lines credit insurance for "credit life and disability insurance"; at end of (6)(b) substituted "terminated the previous license" for "refused to continue the previous license, except that this subsection (6)(b) does not apply to a title insurance producer, as defined in 33-25-105"; deleted former (6)(d) that read: "(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that the applicant is qualified to sell the insurance"; deleted former (6)(g) through (6)(k) that read: "(g) a mechanical breakdown insurance producer;

(h) a prepaid legal plans producer;

(i) a gap insurance producer;

(j) involuntary unemployment insurance producer;

(k) a credit property insurance, credit unemployment insurance, or mortgage guaranty insurance producer"; in (6)(f) near beginning increased time from 60 days to 90 days; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

2001 Amendment: Chapter 106 inserted (6)(k) referring to credit property, credit unemployment, and mortgage guaranty insurance producers; inserted (7) pertaining to exemptions from prelicensing education and examination for certain nonresident insurance producers; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendments — Composite Section: Chapter 316 in (2) at end of first sentence deleted "and collecting the fees required by 33-2-708"; deleted former (3) that read: "(3) Each individual applying for an examination shall remit the fees required by 33-2-708"; in (3) after "remit all" deleted "required fees and"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 472 in (4) at end substituted "meet the qualifications as provided in this section" for "take the examination"; deleted former (7)(h) that read: "(h) a service contract insurance producer"; inserted (6)(h) regarding a prepaid legal plans producer; inserted (6)(i) regarding a gap insurance producer; inserted (6)(j) regarding an involuntary unemployment insurance producer; and made minor changes in style. Amendment effective April 27, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 531 inserted (7)(h) regarding a service contract insurance producer; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1989 Amendment: Substituted (1) through (4) relating to examination for licensure (see 1989 Session Law for text) for former (1) that read: "(1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to an examination as to his competence to act as such agent or solicitor. The commissioner may either conduct the examination or arrange for the examination to be conducted by a testing service, which shall recover the cost of the examination from the applicant"; in (6) deleted former (e) that read: "(e) vehicle insurance"; deleted former (4) that read: "(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed"; in (7)(a), (7)(b), (7)(c), and (7)(g) substituted "insurance producer" for "agent"; in (7)(a), after "insurance producer", deleted "or solicitor"; at end of (7)(c) deleted "subject to reciprocal arrangements as provided for in this code"; in (7) deleted former (d) that read: "(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer"; at end of (7)(f) substituted reference to 33-17-211 for reference to 33-17-205; inserted (7)(h) relating to individual licensed in another state; and made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendments: Chapter 409 in (1) substituted "an examination" for "a personal written examination" and inserted last sentence allowing examination to be conducted by testing service; and in (2), near beginning, substituted "partnership" for "firm".

Chapter 480 inserted (5)(e) referring to applicant for license to sell all-risk federal crop insurance.

1985 Amendment: Inserted (3)(h) referring to title insurance; in (5)(b) at end, inserted exception clause relating to title agents; and deleted former (5)(g) that read: "title insurance agents".

1981 Amendment: Added (5)(h) referring to mechanical breakdown insurance agents.

33-17-213. Conduct of examinations.

Compiler's Comments

1989 Amendment: Deleted former (2) that read: "(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination"; and in (4) substituted "insurance producer" for "agent". Amendment effective January 1, 1990.

1987 Amendment: In (1) substituted "places" for "a place" and deleted last sentence that required the Commissioner to give the examination at his office once a month; and in (3) substituted "commissioner shall assure that the examinations are conducted" for "commissioner shall give, conduct, and grade all examinations".

1985 Amendment: Inserted (5) establishing criteria for examination of a title agent.

33-17-214. Issuance of license — insurance producer lines of authority — license data — lapse of license — change of address.

Compiler's Comments

2013 Amendment: Chapter 169 in (3) before "address" inserted "primary business"; in (6)(a)(i) after "change of address" inserted "or a change of business e-mail address"; and made minor changes in style. Amendment effective April 9, 2013.

2009 Amendments — Composite Section: Chapter 271 in (4) substituted "business entity" for "partnership, corporation, or association". Amendment effective July 1, 2009.

Chapter 313 in (4) substituted "business entity" for "partnership, corporation, or association". Amendment effective July 1, 2009.

2007 Amendments — Composite Section: Chapter 399 inserted (6)(a)(ii) concerning disciplinary action; inserted (6)(b) defining final disposition; and made minor changes in style. Amendment effective May 3, 2007.

Chapter 507 inserted (2)(a)(i) providing that an insurance producer may be licensed for a funeral insurance line of authority; and made minor changes in style. Amendment effective January 1, 2008.

Saving Clause: Section 8, Ch. 507, L. 2007, was a saving clause.

2003 Amendment: Chapter 427 in (5) at end inserted "or terminated or the license lapses"; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

2001 Amendment: Chapter 106 in (1) deleted "The commissioner shall promptly issue a license to a person pursuant to 33-17-211 and 33-17-212" and inserted "A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license, unless that person has been denied a license pursuant to 33-17-1001"; inserted (2) listing the types of lines of authority for which an insurance producer may receive a license; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 316 in (4) at end deleted "as long as the fees required by 33-2-708 are paid"; deleted former (5) that read: "(5) An individual who allows his license to lapse may, within 12 months from the due date of the unpaid annual fee, apply for the same license without having to pass a written examination if he pays a penalty in the amount of twice the unpaid annual fee"; and made minor changes in style. Amendment effective January 1, 2000.

1989 Amendment: In (1) substituted language relating to issuance of license for former language that read: "The commissioner shall promptly issue the license applied for to the person qualified therefor in accordance with this chapter. There is a license for life or disability insurance and a separate license for kinds of insurance other than life or disability"; in (2) inserted "personal identification number"; in (3) inserted "or association"; deleted former (4) that read: "(4) The license of a solicitor shall state the name and address of the agent to be represented"; inserted (4) relating to term of license; inserted (5) relating to renewal of lapsed license; inserted (6) relating to notice of change of address; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-216. Temporary insurance producer license.

Compiler's Comments

1999 Amendment: Chapter 316 in (2) at end deleted "and upon payment of the applicable fee as provided in 33-2-708"; in (3) near middle of first sentence after "continued" deleted "without payment of an additional fee"; deleted former (4) that read: "(4) The fee paid for the temporary license may be applied upon the fee required for a permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance"; and made minor changes in style. Amendment effective January 1, 2000.

1989 Amendment: Throughout section substituted "insurance producer('s)" for "agent('s)"; near beginning of (1)(c) substituted "partnership" for "firm"; inserted (1)(e) relating to any other circumstance involving the public interest; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-217. Limitations and rights under temporary license.

Compiler's Comments

1989 Amendment: Throughout section substituted "insurance producer('s)" for "agent('s)"; at end of first sentence of (3) substituted "but the licensee may not be licensed for an additional kind of insurance under the temporary license" for "and without the making of new appointment of such license by such insurers, but the licensee shall not be appointed as to any additional insurer or additional kind of insurance under such a temporary license"; at end of (3) deleted former language that read: "This provision shall not be deemed to prohibit termination of its appointment by any insurer"; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-219. Inactive status — insurance producers serving in armed forces.

Compiler's Comments

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

33-17-220. Licensing background examination — action by commissioner.

Compiler's Comments

2015 Amendment: Chapter 346 inserted (1)(c) regarding consideration of findings of background examination, including prohibiting approval or renewal or requiring suspension or revocation of certification in certain circumstances. Amendment effective October 1, 2015.

2013 Amendment: Chapter 245 in (1)(a) in first sentence inserted "for a producer's license or navigator certification"; in (1)(b) near end inserted "or navigator's"; and in (2) in first sentence inserted "or navigator certification". Amendment effective July 1, 2013.

2005 Amendment: Chapter 469 deleted former (2) that read: "(2) An entity may not conduct licensing background examinations unless the entity maintains a current filing with the commissioner. The filing must:

(a) contain a description of the criteria, standards, and procedures used in conducting the background examination;

(b) ensure that the examination will be based on nationally recognized criteria, standards, and procedures; and

(c) ensure confidentiality of the applicant's information"; inserted (2) through (5) regarding fingerprint collection, transmission, and retention; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date — Applicability: Section 27, Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to license applications postmarked on or after July 1, 2004.

33-17-231. Appointment of insurance producers — continuation and termination.

Compiler's Comments

2019 Amendment: Chapter 110 in (1) at beginning deleted "Except as provided in 33-17-238"; in (2) at beginning deleted "Except as provided in 33-17-238"; in (3) in second sentence at end deleted "except that the insurer is not required to notify the commissioner of termination of an appointment by affiliation"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 38 in (1) and (2) at beginning inserted exception clause; in (3) after "to the insurance producer" inserted "except that the insurer is not required to notify the commissioner of termination of an appointment by affiliation"; inserted (6) regarding termination of appointment by affiliation; and made minor changes in style. Amendment effective February 20, 2017.

2013 Amendment: Chapter 245 inserted (5) regarding appointment of producer. Amendment effective July 1, 2013.

2009 Amendment: Chapter 271 in (1) and (2) at end of second sentence deleted "pursuant to rules adopted by the commissioner" and inserted third sentence allowing the commissioner to adopt rules to implement electronic filing. Amendment effective July 1, 2009.

1999 Amendment: Chapter 316 in (1) at end of first sentence deleted "and pay the fee as stated in 33-2-708". Amendment effective January 1, 2000.

1993 Special Session Amendment: Chapter 6 in (1) inserted last sentence authorizing adoption of rules for electronic filing of insurance producer appointment; and in (2) inserted second sentence authorizing adoption of rules for electronic filing of written notice of earlier termination of insurance producer appointment. Amendment effective July 1, 1994.

1993 Amendment: Chapter 451 deleted former last sentence of (1) that read: "The term of the appointment is for 1 year and runs from June 1 of each year through May 31 of the succeeding year"; at beginning of first sentence of (2) deleted "Subject to annual renewal by the insurer" and at end inserted "or the insurance producer" and inserted second sentence that read: "Termination of the insurer's authority in Montana also terminates the appointment"; deleted former (3) that read: "Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its insurance producers whose appointments in this state are to remain in effect, accompanied by payment of the annual renewal fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner a termination report of all insurance producers whose appointments in this state are not to remain in effect"; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: In (1) inserted last sentence setting term of appointment; in (2), near beginning, substituted "annual renewal by the insurer" for "annual continuation by the insurer not later than May 31" and deleted from end "or agent"; in (4) substituted "agent's appointment" for "agency appointment" and at end of second sentence deleted "where reasonably possible"; and in (5), in second sentence after "termination", deleted "shall be privileged and".

Case Notes

Licensing — Protection of the Public: The licensing requirement is primarily for the protection of the public and is not meant to create private rights between the agent and insurance company. Standard Ins. Co. v. Sturdevant, 173 M 23, 566 P2d 52 (1977).

33-17-232. Rights of insurance producer following termination of appointment.

Compiler's Comments

2007 Amendment: Chapter 399 in (1) near beginning after "casualty" inserted "title"; and made minor changes in style. Amendment effective May 3, 2007.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-17-236. Appointments of insurance producers by insurers.

Compiler's Comments

2019 Amendment: Chapter 110 throughout section changed "insurance department" to "commissioner"; in (2) at beginning deleted "Except as provided in 33-17-238"; in (4)(a) at beginning deleted "Except as provided in 33-17-238"; in (5) substituted "An" for "Except as provided in 33-17-231, the"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 38 in (2), (4)(a), and (5) at beginning inserted exception clause; in (2) and in (3) in two places before "insurance producer" deleted "licensed"; inserted (4)(c) regarding effective date of appointment when notice is not filed within 15 days; and made minor changes in style. Amendment effective February 20, 2017.

1999 Amendment: Chapter 472 in (1) in first sentence after "particular insurer" deleted "and may not accept applications for the insurer" and substituted second and third sentences for former text that read: "The following are the appointing insurer's requirements for making appointment of a licensed insurance producer"; in (2) in first sentence after "executed" substituted "with" for "or the first insurance application is submitted by" and at end after "producer" deleted "whichever is earlier"; deleted former (1)(b) that read: "(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgment of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgment is received or the agency contract is executed"; in (3) near beginning after "verify" deleted "within 5 working days" and near end after "insurer" deleted "within 5 days"; in (4) near beginning after "effective on the" inserted "earlier of the", after "executed" inserted "agency", and after "contract" inserted "or the date on which the insurer files the notice of appointment with the insurance department, unless the appointment is disapproved by the insurance department. A disapproved appointment is void on the date the department provides notification to the insurer"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1993 Special Session Amendment: Chapter 6 in (1)(a) inserted last sentence authorizing adoption of rules for electronic filing of written notice of insurance producer appointment. Amendment effective July 1, 1994.

Effective Date: Section 73, Ch. 713, L. 1989, provided that this section is effective January 1, 1990.

33-17-237. Notification of violation or appointment termination.

Compiler's Comments

1993 Amendment: Chapter 451 deleted second sentence of (1) that read: "If the reason of the termination is for any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 1, part 7"; inserted (2) requiring notification of the Department upon termination; inserted (3) establishing a duty to notify the Department if a violation has occurred; and inserted (4) requiring that certain information regarding the alleged termination of violation be provided upon request.

Effective Date: Section 73, Ch. 713, L. 1989, provided that this section is effective January 1, 1990.

Code Commissioner Correction: Pursuant to authority granted in sec. 83, Ch. 83, L. 1989, the Code Commissioner has corrected an apparent erroneous reference in subsection (1). Section 6(1), Ch. 713, L. 1989, contained a reference to section 62 of that act, purportedly relating to causes for termination of appointment of an insurance producer. The correct reference appears to be to section 63 (33-25-301), rather than section 62 (33-25-214), and the Code Commissioner has corrected the reference accordingly.

33-17-238. Appointment by affiliation.

Compiler's Comments

2019 Amendment: Chapter 110 in (1) deleted "an individual insurance producer or"; deleted former (3) that read: "(3) If an insurance producer is appointed by affiliation under subsection (1), the insurer is not required to file a separate notice of appointment for that insurance producer under 33-17-231(1) and 33-17-236"; in (3) substituted "business entity insurance producer" for "insurance producer"; in (4) substituted "A business entity insurance producer" for "An insurance producer"; in (4)(a)" substituted "a business entity insurance producer" for "an insurance producer"; in (4)(b) substituted "business entity insurance producer" for "insurance producer"; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: Section 5, Ch. 38, L. 2017, provided: "[This act] is effective on passage and approval." Approved February 20, 2017.

33-17-241. Navigator certification — duties — prohibitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 486, L. 2023. Amendment effective May 9, 2023.

2015 Amendment: Chapter 346 inserted (3)(b), (3)(c), and (3)(d) regarding prohibitions against endorsing particular health benefit plans, providing information about plans or products not offered in the exchange, and engaging in unfair or fraudulent practices; and made minor changes in style. Amendment effective October 1, 2015.

Effective Date: Section 11, Ch. 245, L. 2013, provided: "[This act] is effective July 1, 2013."

33-17-242. Commissioner's duties — navigator certification — training for certified application counselors and others.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 486, L. 2023. Amendment effective May 9, 2023.

Effective Date: Section 11, Ch. 245, L. 2013, provided: "[This act] is effective July 1, 2013."

33-17-243. Producer exchange training — certification for exchange sales.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) after "provided for in this section" deleted "and subsequently completing continuing education in every 24-month period"; deleted former (2) that read: "(2) The continuing education required under this section must be counted toward the total number of hours required in 33-17-1203"; in (2) after "training and certification program" deleted "and the continuing education courses"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

Effective Date: Section 11, Ch. 245, L. 2013, provided: "[This act] is effective July 1, 2013."

33-17-244. Lists of certified producers and navigators.

Compiler's Comments

Effective Date: Section 11, Ch. 245, L. 2013, provided: "[This act] is effective July 1, 2013."

Part 3
Adjusters

33-17-301. Adjuster license — qualifications — catastrophe adjustments — education and examination exemption.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) in three places substituted "person" for "individual" and in last sentence substituted "persons" for "individuals"; in (2) after "licensed as an" inserted "individual"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendment: Chapter 139 in (1) at end of first sentence substituted "the individual holds an adjuster license" for "licensed as an adjuster under this chapter" and in third sentence substituted "issue the license" for "issue the adjuster license" and substituted "licensed under this section" for "licensed as an adjuster"; in (3) substituted "licensed under this section" for "licensed as an adjuster", in three places before "license" deleted "adjuster", and at end inserted "under this section"; in (4)(a) substituted "nonresident license under this section" for "nonresident adjuster license" and at end inserted "requirements"; in (6) substituted "A license issued under this section" for "An adjuster license"; substituted (7) defining adjuster for "The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters"; and made minor changes in style. Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2013 Amendments — Composite Section: Chapter 169 inserted (2)(b)(ii) concerning nonresident adjusters; inserted (2)(e) requiring licensing background examinations; and made minor changes in style. Amendment effective April 9, 2013.

Chapter 406 in (2)(c) at beginning inserted exception clause; inserted (4) regarding education and examination exemption for nonresident adjuster license; and made minor changes in style. Amendment effective August 1, 2013.

2009 Amendment: Chapter 271 in (3) in two places and in (4) near middle substituted "business entity" for "partnership or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 469 in (1) in second sentence after "license" substituted "in a form approved by the commissioner" for "according to forms that the commissioner prescribes and furnishes"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 427 in (1) in two places substituted "An individual" for "A person"; substituted (2)(c) concerning passing adjuster licensing exam for former text that read: "must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make the applicant competent to fulfill the responsibilities of an adjuster"; in (5) in first sentence substituted "lapsed" for "expired", substituted second sentence concerning renewal for former sentence that read: "The license is subject to renewal upon written request to the commissioner", and inserted third sentence concerning biennial fee; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

1999 Amendment: Chapter 316 in (1) at end of third sentence deleted "upon payment of the license fee provided in 33-2-708"; in (3) deleted former second sentence that read: "An additional full license fee must be paid for each individual in excess of one named in the partnership or corporation adjuster license to exercise its powers"; in (5) at end of second sentence substituted "renewal upon written request to the commissioner" for "annual payment to the commissioner of the renewal fee required by 33-2-708, accompanied by a written request for renewal"; and made minor changes in style. Amendment effective January 1, 2000.

1997 Amendment: Chapter 531 in (2)(e), near middle of first sentence after "office", inserted "for not less than 5 years"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1989 Amendment: At end of introductory clause of (2) deleted "must be qualified therefor as follows"; in (2)(d) inserted "trustworthy and"; throughout (3) and (4) substituted "partnership" for "firm"; inserted (5) relating to term of license; inserted (6) relating to rules; and made minor changes in phraseology. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

33-17-302. Public adjuster contracts — financial disclosure.

Compiler's Comments

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

Effective Date: Section 16, Ch. 139, L. 2015, provided that this section is effective on passage and approval. Approved March 30, 2015.

33-17-303. Public adjuster standards of conduct.

Compiler's Comments

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

Effective Date: Section 16, Ch. 139, L. 2015, provided that this section is effective on passage and approval. Approved March 30, 2015.

Part 4

Nonresident Licensees

33-17-401. Nonresident insurance producer — license.

Compiler's Comments

2005 Amendment: Chapter 469 in (1)(c) after "completed" deleted "uniform" and after "application" inserted "in a form approved by the commissioner". Amendment effective October 1, 2005.

2001 Amendment: Chapter 106 at beginning of (1) substituted "A nonresident person, unless denied licensure pursuant to 33-17-1001, must be granted a license" for "A nonresident person may apply for a license" and deleted former (1)(a) through (4) that read: "(a) the person meets the requirements of 33-17-211(2);

(b) the person is licensed in the state of his residence to act as insurance producer for the kind or kinds of insurance for which he applies for licensing in this state; and

(c) the person's state of residence issues a similar license to a resident of this state for the same kind or kinds of insurance for which the person is qualified in this state.

(2) The commissioner may license a nonresident individual without written examination if the insurance department in the individual's state of residence certifies that:

(a) the individual either has passed a written examination for each kind of insurance applied for or was licensed prior to the time a written examination was required in the individual's state of residence; and

(b) is currently licensed and in good standing.

(3) The commissioner may issue only a nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state.

(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon a resident of this state who is a nonresident licensee of the other state and the limitation, conditions, or requirements are in addition to or in excess of those imposed on nonresident persons under this chapter, the same limitation, conditions, or requirements must be imposed upon the residents of the other state"; inserted (1)(a) through (1)(d) providing for conditions for granting nonresident licenses; inserted (2) providing for licensure as nonresident surplus lines producer; inserted (3) providing for licensure as nonresident limited lines producer; and made minor changes in style. Amendment effective October 1, 2001, except that subsection (3) is effective November 1, 2002.

1989 Amendment: Inserted (1) relating to licensure application requirements by nonresident; inserted (2) relating to licensure without written examination; at end of (3) deleted "and only if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana"; inserted (4) relating to conditions upon licensure of nonresidents in other states; inserted (5) relating to automatic termination of Montana nonresident license; and made minor changes in form. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

1987 Amendment: Near beginning substituted "commissioner may issue only a nonresident license to" for "commissioner may license as an agent" and after "resident of this state" inserted "and only".

33-17-406. Nonresident insurance producer subject to insurance code.

Compiler's Comments

1989 Amendment: Substituted "insurance producer" for "licensees"; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-407. Nonresident insurance producer to pay taxes — annual report required.

Compiler's Comments

2013 Amendment: Chapter 268 in (1) near middle substituted "corporate income taxes" for "corporate license taxes". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

1989 Amendment: Throughout section substituted "insurance producer" for "licensee"; near end of (1) inserted "residing" and at end inserted "and written within the boundaries of this state"; and in (2) substituted language relating to filing tax return for former language that read: "A nonresident licensee shall make a written report to the commissioner annually within 45 days following the end of each calendar year. The report must contain a listing of all business written on subjects or risks located or performed in Montana. The report must be in a form prescribed by the commissioner and must include but not be limited to a listing of company, policy number, premium earned, and commission earned." Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Statement of Intent: The statement of intent attached to HB 710 (Ch. 395, L. 1983) provided: "A statement of intent is required for this bill because it authorizes the Insurance Commissioner to prescribe forms for reporting of business written by nonresident agents. The report must include the name of the company, the policy number, premium earned, and commission earned, and any other information as the Commissioner may direct."

33-17-408. Reciprocity — nonresident insurance producer licensing and continuing education.

Compiler's Comments

Effective Date: Section 12(1), Ch. 106, L. 2001, provided that this section is effective October 1, 2001.

33-17-409. Status of nonresident insurance producers — biennial renewal of license — payment of fees.

Compiler's Comments

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

33-17-410. Service of process.

Compiler's Comments

Effective Date: Section 57, Ch. 157, L. 2023, provided that this section is effective on passage and approval. Approved April 19, 2023.

33-17-411. Penalty.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: Substituted "insurance producer" for "licensee"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Part 5
Consultants

Part Compiler's Comments

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

33-17-502. Prohibition on representation as consultant — receiving fee.

Compiler's Comments

2003 Amendment: Chapter 427 at end of (1) and (2) substituted "may be fined pursuant to 33-1-317" for "is guilty of a misdemeanor and upon conviction shall be fined $1,500". Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

2001 Amendment: Chapter 227 in (1) near beginning after "identifies or" substituted "represents to the public that the person is an insurance consultant" for "holds himself out to be an insurance consultant" and near middle substituted "represents to the public that the person has particular insurance qualifications" for "holds himself out in any manner as having particular insurance qualifications"; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendments: Chapter 613 deleted (3)(c) relating to insurance agent who accepts fee for placement through state compensation insurance fund as provided in 33-18-212; and made minor change in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

Chapter 713 in (3)(c) (now deleted), before "licensed casualty insurance producer", deleted "duly" and substituted "producer" for "agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-503. Application — residency — fee — expiration.

Compiler's Comments

2013 Amendment: Chapter 169 inserted (2) concerning age and residency for consultant license; and made minor changes in style. Amendment effective April 9, 2013.

2005 Amendment: Chapter 469 in (1)(a) after "application" substituted "in a form approved by the commissioner" for "on forms the commissioner prescribes". Amendment effective October 1, 2005.

2003 Amendment: Chapter 380 in (1)(b) after "fee" substituted reference to 33-2-708 for "of $50" and at end required deposit of fee in state special revenue fund to credit of state auditor rather than credited to the state's general fund; in (2) substituted language providing that licenses continue until lapsed, suspended, revoked, or terminated for "Each consultant license must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated"; and made minor changes in style. Amendment effective October 1, 2003.

The amendments to this section made by Ch. 427, L. 2003, were rendered void by sec. 54, Ch. 380, L. 2003, a coordination section.

1995 Amendment: Chapter 379 in (1)(b) inserted "which the commissioner shall deposit with the state treasurer to be credited to the state's general fund"; and in (2) substituted "license must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated" for "license expires on May 31 next following the date of issue".

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1989 Amendment: Near beginning of (1) substituted "a consultant" for "an insurance consultant's"; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-504. Issuing license — limitations.

Compiler's Comments

2003 Amendment: Chapter 427 near end inserted "33-1-214 through 33-1-219". Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

1989 Amendment: Near beginning substituted "a consultant" for "an insurance consultant's"; substituted "an individual" for "any natural person"; and made minor change in phraseology. Amendment effective January 1, 1990.

1981 Amendment: Inserted "and 33-1-221 through 33-1-229" after "33-1-212"; and made minor changes in phraseology.

33-17-505. Qualification examination — background examination.

Compiler's Comments

2013 Amendment: Chapter 169 inserted (2) requiring licensing background examination; and made minor changes in style. Amendment effective April 9, 2013.

1999 Amendments — Composite Section: Chapter 316 deleted former (2) that read: "(2) The fee for taking the consultant license examination is $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination may be no more than the cost of administering the examination, not to exceed $50"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 472 inserted (2) regarding the conduct of examinations; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1989 Amendment: Near middle of (1) substituted "a consultant license" for "license as an insurance consultant"; and made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendment: In (1), after "commissioner shall", deleted "require membership in one or more of the following: the American college of life underwriters, the American college of property and liability underwriters, the society of actuaries, the casualty actuarial society, or the American academy of actuaries or".

33-17-511. Consideration for services only on written memorandum.

Compiler's Comments

2007 Amendment: Chapter 399 near end of first sentence before "the amount" inserted "services to be provided and"; and made minor changes in style. Amendment effective May 3, 2007.

2003 Amendment: Chapter 380 near end of first sentence after "memorandum" inserted reference to consultant's Montana insurance license number. Amendment effective October 1, 2003.

1989 Amendment: Substituted "insurance consultant" for "licensee"; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-512. Limitation on type of consideration.

Compiler's Comments

1993 Amendment: Chapter 215 substituted language concerning limitation on receipt of fees or consideration for former text that read: "A person licensed as an insurance consultant may not receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the use of securities or trusts in connection with pensions for a person to whom the licensee has performed a related consulting service for which he has received a fee or contracted to receive a fee within the preceding 12 months."

1989 Amendment: Made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-513. Restrictions on insurers recommended by licensee.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: Made minor changes in phraseology. Amendment effective January 1, 1990.

Part 6
Administrators

Part Compiler's Comments

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Incorporation Into the Montana Insurance Code: Sections 33-17-601 through 33-17-605 (33-17-601 and 33-17-605 now repealed) and 33-17-611 through 33-17-618 were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of the Montana Insurance Code, Title 33, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in Title 33.

Law Review Articles

Pretrial Justice in Out-of-the-Way Places — Including Rural Communities in the Bail Reform Conversation, Gross, 84 Mont. L. Rev. 159 (2023), https://scholarworks.umt.edu/mlr/vol84/iss2/1/.

33-17-602. Written agreement required.

Compiler's Comments

1989 Amendment: Made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendment: In (1), before "33-17-612", deleted reference to 33-17-605.

33-17-603. Certificate of registration.

Compiler's Comments

1997 Amendment: Chapter 42 in (3), in second sentence, substituted "the certificate" for "the license". Amendment effective March 12, 1997.

1995 Amendment: Chapter 379 in (3), in first sentence, substituted "registration must be renewed each year by the administrator paying a continuation fee of $100 on or before July 1" for "registration is renewable annually on July 1. A request for renewal must be accompanied by a renewal fee of $100" and inserted second and third sentences concerning continuation of the license upon payment of fee and deposit of fee in general fund; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1991 Amendment: In (3) substituted "July 1" for "the date of issue".

1989 Amendment: In (5) substituted "a person who acts as an administrator" for "any administrator who acts as such"; and made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-604. Waiver of certification requirements.

Compiler's Comments

1989 Amendment: Made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-611. Maintenance of information.

Compiler's Comments

1989 Amendment: Made minor changes in phraseology. Amendment effective January 1, 1990.

33-17-613. Collection of charges and premiums.

Compiler's Comments

1989 Amendment: Made minor changes in phraseology. Amendment effective January 1, 1990.

Part 10

Revocation, Suspension, and Penalties

Part Compiler's Comments

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

33-17-1001. Suspension, revocation, or refusal of license.

Compiler's Comments

2015 Amendment: Chapter 139 in (1) near beginning substituted "a license under this chapter" for "an insurance producer's license, adjuster license, or consultant license" and near the end substituted "a licensee" for "an insurance producer, adjuster, consultant"; and made minor changes in style. Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2009 Amendments — Composite Section: Chapter 271 in (2) near beginning substituted "business entity" for "partnership or corporation"; in (3) near end after "surrendered" inserted "suspended, revoked, refused, or denied"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 313 in (1)(i) inserted "denied"; inserted (1)(m) concerning failure to comply with administrative or court order imposing child support obligation; inserted (1)(n) concerning failure to pay state income tax; in (2) near beginning substituted "business entity" for "partnership or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 427 in (1) near middle inserted "adjuster license, or consultant license", near end inserted "adjuster, consultant", and at end substituted "those licenses" for "an insurance producer's license"; at end of (1)(b) after "fraud" inserted language enumerating types of misrepresentation or fraud; deleted former (1)(g) that read: "(g) made a materially untrue statement in the license application or in the continuing education affidavit"; at end of (1)(g) inserted "or application for insurance"; at end of (1)(j) inserted "or to any document related to an insurance transaction"; substituted (3) concerning authority of commissioner to impose penalties or remedies for former text that read: "The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204"; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

2001 Amendment: Chapter 227 in introductory clause of (1) substituted "The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license or may levy a civil penalty in accordance with 33-1-317, or choose any combination of actions, when an insurance producer or applicant for an insurance producer's license has" for "Except as provided in 33-17-411, after a hearing, which must be held no less than 10 days after advance notice by certified mail, on charges given under 33-1-314(3), the commissioner may suspend for up to 5 years, revoke, refuse to continue, or deny a license issued under this chapter if the commissioner finds that the licensee or applicant has". Amendment effective October 1, 2001.

1993 Amendments: Chapter 164 near middle of (1) increased length of allowable license suspension from not more than 12 months to up to 5 years and after "chapter" deleted "or any surplus lines insurance producer license"; and made minor changes in style.

Chapter 622 in (1)(g), at end, inserted "or in the continuing education affidavit"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In middle of (1) inserted "or may deny an application for", substituted "insurance producer" for "agent", after "as provided in 33-1-314(3) to the licensee" deleted "and to the insurers represented, as to an agent, or to the appointing agent, as to a solicitor", and at end, after "he finds that", substituted "the licensee or applicant has" for "as to the licensee any one or more of the following causes exist"; in (1)(a) substituted "engaged or is about to engage in an act or practice" for "for any cause"; substituted language in (1)(c) relating to violation of rule, subpoena, or order for former language that read: "for violation of or noncompliance with any applicable provision of this code or for willful violation of any lawful rule or order of the commissioner"; substituted language in (1)(d) relating to wrongful use of money for former language that read: "for misappropriation or conversion to his own use or illegal withholding of moneys or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license"; substituted language in (1)(e) relating to felony conviction for former language that read: "conviction, by final judgment, of a felony involving moral turpitude"; substituted language in (1)(f) relating to fraudulent, coercive, or dishonest practices for former language that read: "if in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices or has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public"; inserted (1)(g) relating to materially untrue statement; inserted (1)(h) relating to misrepresentation of contract terms; inserted (1)(i) relating to unfair trade practice; inserted (1)(j) relating to suspended or revoked license; inserted (1)(k) relating to forging; inserted (1)(l) relating to cheating on examination; inserted (1)(m) relating to accepting business from nonlicensed person; in (2) inserted language relating to denial of license; and made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendments: Chapter 409 in (1) reduced notice period to 10 days from 20 days; in (2) substituted "partnership" for "firm"; inserted (3) allowing suspension, revocation, or refusal of license without investigation or written findings in cases of conviction of certain felonies; and made minor changes in grammar.

Chapters 409 and 537 near middle of (1) substituted "lines" for "line" and before "certified mail" deleted "registered or".

1983 Amendment: At beginning of (1), inserted "Except as provided in 33-17-411".

Case Notes

License Revocation for Felony Theft: Plaintiff's occupational license as a life insurance agent was revoked solely because she was convicted of felony theft. No effort was made to determine whether the conviction related to the public health, welfare, and safety as it applied to the practice of her occupation. The Supreme Court held that the mere finding that a licensee was convicted of a felony involving moral turpitude is not a sufficient basis upon which to hold that the conviction is related to the public health, welfare, or safety as it relates to the licensed occupation. (See 1989 amendment.) Mills v. Comm'r of Ins., 226 M 387, 736 P2d 102, 44 St. Rep. 743 (1987), overruled in Erickson v. St., 282 M 367, 938 P2d 625, 54 St. Rep. 395 (1997).

33-17-1002. Procedure following suspension or revocation.

Compiler's Comments

2015 Amendment: Chapter 139 in (2) substituted "licensee" for "insurance producer". Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2009 Amendment: Chapter 271 in (4) near beginning after "license of a" substituted "business entity" for "partnership or corporation", after "member" deleted "of the partnership or", and after "director of the" substituted "business entity" for "corporation"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 427 in (1) in first sentence after "revocation" inserted "or refusal", after "shall" deleted "immediately", after "licensee" substituted "or applicant" for "of the suspension or revocation either in person or", and after "licensee" substituted "or applicant at the last-known address contained in the records of" for "at his address last of record with" and in second sentence after "Notice" deleted "by mail" and after "when" deleted "the notice is"; inserted (2) concerning reissuance of lapsed license; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

1989 Amendment: At end of (1) deleted "The commissioner shall give like notice to the insurers represented by the agent, in the case of an agent's license, and to the agent by whom appointed, in the case of a solicitor's license"; deleted former (2) that read: "(2) Suspension or revocation of the license of an agent shall automatically revoke or suspend the licenses of all solicitors appointed by him"; inserted second sentence of (2) relating to 5-year term of revocation; and made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendment: In (4), in two places, substituted "partnership" for "firm".

Case Notes

Damages for Revocation Without Notice: In an action by an insurance agent against the State Insurance Commissioner to recover damages for revoking his license without first giving him notice and a chance to be heard, even though the Commissioner had failed to follow the steps prescribed by section 40-1330, R.C.M. 1947 (since repealed), in revoking the license, it appearing affirmatively that plaintiff had been guilty of rebating, he was at best entitled only to nominal damages and the judgment for defendant on a directed verdict would not be disturbed on appeal to enable plaintiff to recover merely such damages. Robb v. Porter, 65 M 460, 211 P 210 (1922).

33-17-1004. Acting without license.

Compiler's Comments

2017 Amendment: Chapter 396 at end of first sentence deleted "and may be subject to conviction of a crime"; deleted former (2) that read: "(2) A person convicted under this section shall, for a first conviction, be fined $500 or imprisoned in the county jail for 90 days, or both. For a second conviction, the person shall be fined an amount not to exceed $1,000 or incarcerated for a term not to exceed 1 year, or both. For a third or subsequent conviction, the person shall be fined an amount not to exceed $5,000 or incarcerated for a term not to exceed 2 years, or both"; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2015 Amendment: Chapter 139 in (1) after "acts" deleted "as an insurance producer or adjuster". Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2003 Amendment: Chapter 493 in (1) at beginning substituted "In addition to the requirements and penalties described in 33-17-201 and 33-17-411" for "Except as provided in 33-17-411" and at end provided that the person is "subject to the provisions of 33-1-317 and 33-1-318 and may be subject to conviction of a crime"; in (2) in first sentence substituted "convicted under this section, shall for a first conviction" for "guilty of a misdemeanor and upon conviction" and inserted second and third sentences providing penalties for a second conviction and for a third or subsequent conviction; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

1989 Amendment: Near beginning, after "person", deleted "partnership, association, or corporation"; substituted "producer" for "agent, solicitor"; and made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendment: Near beginning substituted "partnership" for "firm".

1983 Amendment: At beginning of section, substituted "Except as provided in 33-17-411, a" for "Any".

33-17-1005. Restrictions on acting as legal guardian of insured or policyholder.

Compiler's Comments

Effective Date: Section 13, Ch. 493, L. 2003, provided that this section is effective on passage and approval. Approved April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

Part 11
Conduct of Business by Insurance Producers

Part Compiler's Comments

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Part Case Notes

Ambiguity in Insurance Policy as to Submission of Claims Resolved in Favor of Insured: Golt worked as a civilian employee of the Army and Air Force Exchange Service (AAFES) until he was discharged from employment in 1994 for cause. Thirty days after termination, Golt died of carbon monoxide poisoning. As a benefit of employment, Golt was covered by an accident insurance policy issued by General American Life Insurance Company (General) and also by Aetna Life Insurance Company (Aetna) under a group life and accident and health insurance policy. AAFES transmitted the Aetna claim, but did not transmit the General claim. A subsequent request for benefits from General was denied because the claim was not submitted within 20 days after the covered loss occurred. Golt's wife asserted that by tendering the claim to AAFES within the 20-day period, she satisfied the notice requirements of the General policy, while General contended that the policy plainly informed both Mrs. Golt and her attorneys that notice of claim and proof of loss were to be sent to the National Accident Insurance Underwriters (NAIU) or one of General's agents and that AAFES was the policyholder, not a General agent. The Supreme Court held that the notice provision in the policy was ambiguous because it gave an invalid address for NAIU and did not list any acceptable General agents. However, the notice did allow claims to be submitted through the policyholder/employer. For purposes of this case, when accepting or processing claims, AAFES, with the express permission of General, was performing a function of the insurer and was properly considered an agent of the insurer. Mrs. Golt's claim was thus timely submitted. Golt v. Aetna Life Ins. Co., 2000 MT 155, 300 M 142, 2 P3d 841, 57 St. Rep. 613 (2000).

Duty of Insurance Broker With Respect to Insured or Insurer: The insureds asked First National Insurance, Inc., to cancel the policy that First National had obtained for them from Nautilus Insurance Company. First National informed Nautilus of the cancellation, but the policy was to remain in effect for 3 months because of Nautilus's practice of retaining a portion of the paid premium. During that time, the insureds suffered a loss and Nautilus paid the claim. Nautilus then sued First National, alleging that First National as Nautilus's agent had a duty to take additional steps on Nautilus's behalf. The Supreme Court held that there was no duty because the broker acted as agent with respect to an insured and an insurer on the basis of which party requested an action to be taken. In the present case, the insureds had requested the cancellation and the broker was therefore acting on their behalf. Nautilus Ins. Co. v. First Nat'l Ins., Inc., 254 M 296, 837 P2d 409, 49 St. Rep. 802 (1992).

Fixed and Permanent Relationship of Independent Agent — Agent's Knowledge as Company's Knowledge: A person employed by an insurance company for 37 years enjoyed a fixed and permanent relationship as the company's agent and, regardless of the fact that as an independent agent he sold other types of insurance, the agent's knowledge was considered knowledge held by the company. Tynes v. Bankers Life Co., 224 M 350, 730 P2d 1115, 43 St. Rep. 2243 (1986).

Involuntary Trustee of Insurance Refunds: An insurance company that issues a master policy in contemplation of the issuance of certificates of insurance to designees of the owner named in the master policy and then issues those certificates, insures by separate contracts of insurance those designees. Plaintiff, as such a designee, was entitled to premium refunds made to the defendant insurance agent by the insurer, and the defendant became an involuntary trustee of the refunds for the plaintiff. Credit Alliance Corp. v. Sturdevant-Van Wormer Ins. Co., 465 F. Supp. 1115 (D.C. Mont. 1979).

33-17-1101. Place of business — display of license — records.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 18, Ch. 157, L. 2023. Amendment effective April 19, 2023.

2013 Amendment: Chapter 169 in (1) in fourth sentence before "address" deleted "street" and before "place of business" inserted "primary"; in (2) after "The license" inserted "or, if the insurance producer has more than one place of business, a copy of the license" and after "displayed" deleted "in a place of business at the street address shown on the license"; and made minor changes in style. Amendment effective April 9, 2013.

1997 Amendment: Chapter 261 in (1), in four places after reference to place of business, inserted reference to places of business to allow insurance producers to maintain more than one place of business and near beginning of fourth sentence, after "address", inserted "or addresses"; and made minor changes in style.

1989 Amendment: Throughout section substituted "insurance producer('s)" for "agent('s)" or "agents"; in (1), at end of fourth sentence, deleted "and the licensee shall promptly notify the commissioner of any change in his street or mailing address"; near beginning of (2), after "license", deleted "of the licensee and the license of each solicitor appointed by and representing the licensee"; in middle of (3), after "his license", deleted "and the licenses of his solicitors"; and made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendment: In (1), in first sentence, inserted "resident" before "agent", after "business" inserted "in this state", inserted second sentence allowing nonresident agent to maintain place of business in this state, in fourth sentence inserted "street" before "address", and at end of sentence substituted "in his street or mailing address" for "thereof"; in (2) inserted "at the street address shown on the license"; and made minor changes in grammar.

1985 Amendment: In (3) at end, inserted "except that title agents, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216".

33-17-1102. Reporting and accounting for premiums — misappropriation.

Compiler's Comments

2017 Amendment: Chapter 396 deleted former (3) that read: "(3) An insurance producer who purposely or knowingly diverts or misappropriates insurance premiums commits theft pursuant to 45-6-301." Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2003 Amendment: Chapter 380 in (3) after "who" substituted "purposely or knowingly" for "unlawfully", after "or" substituted "misappropriates" for "appropriates", and after "premiums" substituted reference to theft pursuant to 45-6-301 for "or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law"; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: Throughout section substituted "insurance producer" for "agent", "agent or solicitor", and "licensee"; inserted (3) relating to penalty for unlawful diversion or appropriation of premiums; and made minor changes in phraseology. Amendment effective January 1, 1990.

1987 Amendment: In (1), near beginning, substituted "solicitor must be held in a separate trust account. The licensee shall at all times act in a fiduciary capacity" for "solicitor shall be trust funds so received by the licensee in a fiduciary capacity" and after "33-25-105" deleted "if the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds"; in (2), at end, deleted "is, upon conviction, guilty of theft and shall be punished as provided by law"; and made minor changes in grammar and phraseology.

1985 Amendment: In (1) at beginning of second sentence, inserted "Except for a title agent as defined in 33-25-105".

33-17-1103. Accepting and paying commissions, fees, or consideration.

Compiler's Comments

2009 Amendment: Chapter 271 in (2) near end of second sentence substituted "business entity" for "partnership or corporation". Amendment effective July 1, 2009.

2007 Amendment: Chapter 399 substituted (3) concerning surplus lines producers for former text that read: "This section does not apply to those transactions with surplus lines insurance producers that are lawful under 33-2-306." Amendment effective May 3, 2007.

2001 Amendment: Chapter 227 in (2) at end of first sentence deleted "except as provided in 33-17-1113"; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendment: Substituted language in (1) relating to payment and acceptance of commissions and fees for former (1) and (2) that read: "(1) An agent may, under rules adopted by the commissioner, place an insurance coverage with an insurer as to which he is not then licensed or appointed as an agent, and the insurer shall accept such business, only when placed through an agent, licensed under this chapter and appointed by the insurer. Both agents involved in such an exchange of business must be licensed as to all of the kinds of insurance represented by the coverage so placed.

(2) The agents involved in a lawful exchange of business under subsection (1) above may divide between them the commission or compensation payable on account of such coverage"; in (2) substituted "insurance producer" for "agent or solicitor" and near end substituted "partnership" for "firm"; in (3) substituted "insurance producers" for "agents" and at end deleted "or as to life or disability insurance placed as provided in 33-17-1104"; and made minor changes in punctuation and phraseology. Amendment effective January 1, 1990.

1987 Amendment: In (1), near beginning, substituted "under rules adopted by the commissioner" for "occasionally only".

1987 Statement of Intent: The statement of intent attached to Ch. 409, L. 1987, provided: "(1) A statement of intent is required for this bill because:

(a) section 17 [33-17-1103] authorizes the commissioner of insurance to determine by rule the instances in which a property and casualty insurance agent may place insurance coverage with an insurer as to which he is not then licensed or appointed as an agent;

(b) section 18 [33-17-1104 (now repealed)] authorizes the commissioner to determine the instances in which a life or disability insurance agent may place excess or rejected risks in an insurer who has not appointed him as agent; and

(c) section 2 [33-17-201] authorizes the commissioner to prescribe by rule and make available the forms required in connection with an application for an insurance agent license.

(2) The legislature intends that the rules that the commissioner adopts to implement this bill be designed to protect Montana insurance consumers.

(3) The legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority and which permits the commissioner:

(a) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and

(b) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703 [now repealed]."

Part 12
Insurance Producer and Consultant Continuing Education Act

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 622, L. 1993, provided: "A statement of intent is required for this bill because it authorizes the commissioner of insurance to promulgate rules relating to the course content, instructors, material, instructional format, department of insurance forms, and procedures that will compose the continuing education program for insurance producers and consultants and the fees related to the costs of processing the documents and preparing and providing the services mandated by this bill. The legislature intends that the rules adopted to implement this bill be designed principally to protect the insurance-buying public in Montana by ensuring that insurance producers and consultants complete appropriate education activities as a condition of continued licensure. To the extent that they do not conflict with this bill, the model regulations on agents' continuing education adopted by the national association of insurance commissioners in July 1990 express principles that are consistent with this legislative intent and may be used as a model for the continuing education program. The legislature further intends that the commissioner adopt the rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority that permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any laws of this state or with any reasonable implication of those laws; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703 [now repealed]."

Part Administrative Rules

Title 6, chapter 6, subchapter 42, ARM Continuing education program for insurance producers and consultants.

33-17-1201. Short title.

Compiler's Comments

2005 Amendment: Chapter 38 after "Producer" inserted "Adjuster"; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

33-17-1202. Purpose.

Compiler's Comments

2015 Amendment: Chapter 139 in (1) in two places and in (2) after "adjusters" inserted "public adjusters"; and made minor changes in style. Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2005 Amendment: Chapter 38 in four places inserted reference to adjuster; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

33-17-1203. Continuing education — basic requirements — exceptions.

Compiler's Comments

2015 Amendment: Chapter 139 in (1)(a) and (3)(b) after "adjuster" inserted "public adjuster"; and made minor changes in style. Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2013 Amendment: Chapter 324 in (1)(b) in two places inserted "prepaid legal insurance"; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendments — Composite Section: Chapter 313 in (1)(a) at end inserted language concerning ethics credits and credit on statutory and rule changes; in (1)(b) near end inserted language concerning credit on changes in statutes and rules; deleted former (1)(c) that read: "an individual licensed as an insurance producer, adjuster, or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 398 in (1)(a) near middle after "licensed" inserted "only for surety bail bonds or"; and in (1)(b) near beginning after "producer only for" inserted "surety bail bonds or for" and near end before "limited lines" inserted "topics specific to surety bail bonds or". Amendment effective April 28, 2009.

Applicability: Section 10, Ch. 313, L. 2009, provided: "[Section 8] [33-17-1203] applies to 24-month periods for obtaining continuing education beginning on or after January 1, 2010."

2005 Amendments — Composite Section: Chapter 38 in (1)(a), (1)(c), (2) (amendment rendered void by Ch. 469 amendment), and (3)(b) near beginning after "producer" inserted "adjuster"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 469 throughout section in five places substituted "an individual" for "a person"; deleted former (2) that read: "(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a biennium than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next biennium"; and made minor changes in style. Amendment effective October 1, 2005.

Applicability: Section 43, Ch. 469, L. 2005, provided: "[Section 18] [33-17-1203] applies to continuing education reporting periods beginning January 1, 2006."

2003 Amendment: Chapter 427 in (1)(a) after "producer" deleted "for property, casualty, surety, or title insurance", after "consultant" substituted "other than a person licensed for limited lines credit insurance" for "for general insurance", after "each" substituted "24-month period" for "calendar year", and increased credit hours from 10 to 24; deleted former (1)(b) and (1)(c) that read: "(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education"; in (1)(b) in two places substituted "limited lines credit insurance" for "credit life and disability insurance", near middle substituted "biennium" for "calendar year", and increased credit hours from 2½ to 5; in (2) in two places substituted "biennium" for "year"; deleted former (4)(a) that read: "(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(6)(d) through (6)(l)"; deleted former (4)(c) and (4)(d) that read: "(c) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;

(d) a person who only executes surety bail bonds"; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

2001 Amendments — Composite Section: Chapter 7 at end of (4)(a) substituted "33-17-212(6)(d) through (6)(j)" for "33-17-212(7)(d) through (7)(k)". Amendment effective October 1, 2001. The amendment by Ch. 106 rendered the amendment by Ch. 7 void.

Chapter 106 in (4)(a) at end substituted "33-17-212(6)(d) through (6)(l)" for "33-17-212(7)(d) through (7)(k)"; deleted former (4)(c) that read: "(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state grants substantially similar privileges to and has similar requirements for residents of this state"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 in (1)(d) near middle after "complete" substituted "2½" for "5"; and at end of (4)(a) substituted "(7)(k)" for "(7)(h)". Amendment effective January 1, 2000.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendments: Chapter 456 inserted (4)(e) concerning surety bail bonds; and made minor changes in style.

Chapter 531 in (3), after "cause", deleted "shown"; in (4)(a), at end, substituted "(7)(h)" for "(7)(g)"; in (4)(c), near middle before "substantially", substituted "grants" for "accords"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 98 in (1)(b), after "disability", deleted "or credit life and disability"; inserted (1)(d) concerning a person licensed to act as an insurance producer only for credit life and disability insurance; deleted (4)(f) that read: "(f) a person selling only credit life and disability insurance incidental to other noninsurance activities"; and made minor changes in style.

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 6.6.4208 Nonresident requirements.

33-17-1204. Review and approval of continuing education courses by commissioner.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 7, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 271 in (2) near beginning of first sentence after "representative of the" substituted "national" for "Montana" and after "advisors" inserted "- Montana". Amendment effective July 1, 2009.

2005 Amendment: Chapter 38 in (2) near middle of first sentence after "agents of Montana" inserted "one representative of the Montana state adjusters association". Amendment effective October 1, 2005.

2003 Amendment: Chapter 380 in (2) near beginning of first sentence substituted "Montana association of insurance and financial advisors" for "national association of insurance and financial advisors-Montana". Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 in (2) near beginning of first sentence after "consisting of" inserted "at least", near middle substituted "one representative of the national association of insurance and financial advisors-Montana" for "one representative of the Montana association of life underwriters", and after "insurance agents of Montana" inserted "one title insurance producer". Amendment effective October 1, 2001.

1999 Amendment: Chapter 316 in (1) at beginning of third sentence after "The" deleted "filing", after "fee" deleted "and process", and at end substituted "is listed in 33-2-708(2)" for "must be determined by the commissioner by rule". Amendment effective January 1, 2000.

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 6.6.4203 Course submissions.

33-17-1205. Compliance — failure to comply — rulemaking authority.

Compiler's Comments

2015 Amendment: Chapter 139 in (3) in two places after "adjuster" inserted "or public adjuster"; and made minor changes in style. Amendment effective March 30, 2015.

Saving Clause: Section 14, Ch. 139, L. 2015, was a saving clause.

Severability: Section 15, Ch. 139, L. 2015, was a severability clause.

2005 Amendments — Composite Section: Chapter 38 in (3) in two places after "producer" inserted "or adjuster". Amendment effective October 1, 2005.

Chapter 469 throughout section in five places substituted reference to individual for reference to person; in (2) inserted second sentence providing that an individual with a lapsed license may not conduct insurance business under another person's license; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 427 in (1) near beginning substituted "biennially in a format" for "annually on a form", near middle before "certification" deleted "written", and at end substituted "biennium" for "calendar year"; substituted (2) concerning lapsed license for former text that read: "The commissioner may suspend the license of any person failing to comply with subsection (1) who has not been granted an extension under 33-17-1203 and may impose a late renewal fee of $20, which is the same amount previously determined by an administrative rule in effect on November 3, 1998. The suspension must remain in effect until the time that the person demonstrates to the satisfaction of the commissioner that the person has complied with all the provisions of this part. If the license of an insurance producer or consultant is suspended by reason of this section for a period exceeding 12 months, the license must be terminated upon notice to the insurance producer or consultant"; inserted (3) concerning report of administrative or criminal action; inserted (6) concerning adoption of rules; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

1999 Amendment: Chapter 316 in (1) deleted former second sentence that read: "The form must be accompanied with a filing fee established by the commissioner"; and in (2) at end after "renewal fee" substituted "of $20, which is the same amount previously determined by an administrative rule in effect on November 3, 1998" for "in the amount of twice the annual filing fee". Amendment effective January 1, 2000.

Effective Date: Section 11(2), Ch. 622, L. 1993, provided that this section is effective January 1, 1995.

33-17-1206. Rulemaking authority.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 622, L. 1993, provided: "A statement of intent is required for this bill because it authorizes the commissioner of insurance to promulgate rules relating to the course content, instructors, material, instructional format, department of insurance forms, and procedures that will compose the continuing education program for insurance producers and consultants and the fees related to the costs of processing the documents and preparing and providing the services mandated by this bill. The legislature intends that the rules adopted to implement this bill be designed principally to protect the insurance-buying public in Montana by ensuring that insurance producers and consultants complete appropriate education activities as a condition of continued licensure. To the extent that they do not conflict with this bill, the model regulations on agents' continuing education adopted by the national association of insurance commissioners in July 1990 express principles that are consistent with this legislative intent and may be used as a model for the continuing education program. The legislature further intends that the commissioner adopt the rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority that permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any laws of this state or with any reasonable implication of those laws; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703 [now repealed]."

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

33-17-1207. Funding for continuing education program.

Compiler's Comments

2003 Amendment: Chapter 427 at beginning of first sentence after "All" deleted "annual". Amendment effective July 1, 2003.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

Effective Date: Section 11(1), Ch. 622, L. 1993, provided that this section is effective July 1, 1993.

Part 14
Travel Insurance

Part Compiler's Comments

Effective Date: This part is effective October 1, 2013.

33-17-1401. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 517, L. 2023. Amendment effective October 1, 2023.

33-17-1402. Requirements to offer and disseminate travel insurance — types of policies — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 517, L. 2023. Amendment effective October 1, 2023.

33-17-1404. Responsibility — enforcement — penalties — scope.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 517, L. 2023. Amendment effective October 1, 2023.

33-17-1405. Travel protection plans.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

33-17-1406. Sales practices.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

33-17-1407. Travel administrators.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

33-17-1408. Rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 15

Rental Vehicle Insurance

Part Compiler's Comments

Effective Date: This part is effective October 1, 2003.

Applicability: Section 7, Ch. 409, L. 2003, provided: "[This act] applies to contracts for rental vehicle insurance issued on or after October 1, 2003."

33-17-1502. Rental vehicle entity license — customer service representative requirements — recordkeeping.

Compiler's Comments

2015 Amendment: Chapter 63 in (1) substituted "a business entity insurance producer license" for "an insurance license as a business entity". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2005 Amendment: Chapter 469 inserted (2) requiring that a rental vehicle entity designate an individual licensed insurance producer who is responsible for the rental vehicle entity's compliance with the insurance laws of this state; inserted (6) requiring that a rental vehicle entity submit to the commissioner an annual report listing each customer service representative presenting rental vehicle insurance information to the public; and made minor changes in style. Amendment effective October 1, 2005.

Part 16

Bail Bond Insurance License

33-17-1601. Special qualifications for surety bail bond insurance license.

Compiler's Comments

Effective Date: Section 11, Ch. 592, L. 2023, provided that this section is effective May 18, 2023.

Severability: Section 9, Ch. 592, L. 2023, was a severability clause.

33-17-1602. Surety bail bond insurance license — basic course of training — temporary license.

Compiler's Comments

Effective Date: Section 11, Ch. 592, L. 2023, provided that this section is effective January 1, 2024.

Severability: Section 9, Ch. 592, L. 2023, was a severability clause.

CHAPTER 18
UNFAIR TRADE PRACTICES

Chapter Case Notes

Insurer Required to Establish Actual Damages — Interference With Prospective Economic Advantage: Plaintiff insurance company sued the defendants for making derogatory comments regarding its leadership and financial condition and alleging violations of the Unfair Trade Practices Act (UTPA) and interference with prospective economic advantage. The District Court granted summary judgment for the defendants, holding that the UTPA does not create a private right of action by one insurer against another and that the plaintiff had failed to establish damages. On appeal, the Supreme Court held that a business entity must establish actual and quantifiable economic damages and that the plaintiff failed do so with claims of general and reputational damages. Victory Ins. Co. v. Mont. St. Fund, 2015 MT 82, 378 Mont. 388, 344 P.3d 977.

No Common-Law Exhaustion of Administrative Remedies Requirement Imposed for Purposes of ERISA Claim: Eldredge brought suit against ASARCO for failure to pay him a retirement benefit pursuant to the company's "70/80" retirement benefit plan. ASARCO claimed that Eldredge had failed to exhaust his administrative remedies. The Supreme Court found that while the Employee Retirement Income Security Act contained no requirement for exhaustion of remedies, the federal courts imposed a "prudential" exhaustion requirement but allowed exceptions to that requirement. The Supreme Court declined to impose the requirement because ASARCO had filed nothing with the District Court to explain the extent or application of the exhaustion requirement other than to make one claim that the requirement existed. Eldredge v. ASARCO, Inc., 2011 MT 80, 360 Mont. 112, 252 P.3d 182.

Claims Administration — Chapter Not Applicable: This chapter was never intended to regulate the investigation, settlement, and negotiation of automobile insurance claims. State ex rel. Cashen v. District Court, 157 M 40, 482 P2d 567 (1971).

Part 1
General Provisions

Part Administrative Rules

Title 6, chapter 6, subchapter 9, ARM Military sales practices.

33-18-101. Purposes.

Case Notes

Clear and Common Issues of Law — No Abuse of Discretion in Certifying Class: A couple sued their insurance company alleging that it systematically refused to pay the reasonable value of general contractor overhead and profit as required by the policy to insureds. The couple sought class certification to include other insureds who were not reimbursed according to the insurance policy. Over the objection of the defendant insurance company, the District Court certified two classes of plaintiffs. The defendant appealed to the Supreme Court, arguing that the District Court had abused its discretion in certifying the classes because each claim was unique and based on each member's individual loss. The defendant also argued that the District Court's finding that the policy was ambiguous was in error. The Supreme Court affirmed, ruling that although the factual finding regarding ambiguity was premature given unresolved factual conflicts, there were clear and common issues of law that predominated the litigation and supported class certification. Kramer v. Fergus Farm Mut. Ins. Co., 2020 MT 258, 401 Mont. 489, 474 P.3d 310.

Insurer's Liability for Misrepresentation of Policy Provisions: Plaintiffs submitted a claim for medical expenses, and even though the insurer had paid similar claims on several prior occasions under the same policy, the insurer denied the claim, so plaintiffs sued for misrepresentation of the policy provisions. The District Court granted the insurer's motion for summary judgment on grounds that: (1) there was no intent by the insurer to misrepresent the policy coverage; (2) the insurer refuted any alleged intent to misrepresent by paying the claim after the misrepresentation occurred; and (3) plaintiffs' claim was not actionable because plaintiffs knew that the statement denying coverage was false. On appeal, the Supreme Court rejected the insurer's arguments. First, 33-18-201 does not distinguish between intentional and unintentional misrepresentation, but rather prohibits misrepresentation categorically, so the issue of whether an insurer intended to misrepresent policy provisions is not a factor. Second, an insurer's conduct after a misrepresentation has no connection to whether a misrepresentation actually occurred. Third, 33-18-201 contains no exceptions for misrepresentations made to claimants who accurately comprehend the meaning of a policy. Rather, the statute is intended to protect all claimants, regardless of their level of knowledge regarding the policy, so a claimant's knowledge regarding the veracity of the insurer's statement concerning policy coverage is irrelevant in determining whether a misrepresentation occurred. Therefore, the District Court erred in granting the insurer's summary judgment motion on the misrepresentation claim. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008).

In McVey v. USAA Cas. Ins. Co., 2013 MT 346, 372 Mont. 511, 313 P.3d 191, the Supreme Court held that the fact that a claim is filed by someone other than the insured does not preclude the insured from invoking the protections of 33-18-201(4) and 33-18-242 and clarified that the reference in Lorang to a "claimant" did not intend to control the scope of the protections provided or otherwise bar an insured from pursuing a claim pursuant to these statutes.

Adoption of "Cause" Interpretation of "Occurrence" Provision In Action Regarding Unfair Trade Practices Statutes — Summary Judgment Properly Granted: The parents of a 13-month-old child who died as a result of a toxic dose of medication administered by a day-care facility, filed an action claiming that the insurer's offer of $300,000 misrepresented the insurance policy liability limit in violation of Montana's unfair trade practices statutes. The parents alleged that their actions against the day-care center and the individual administering the drug entitled them under their third-party rights to twice the policy limit under an aggregate limits provision in the policy for "all occurrences". Relying on the policy language and the analysis in Greaves v. St. Farm Ins. Co., 984 F. Supp. 12 (D.D.C. 1997), affirmed in 172 F3d 919 (C.A.D.C. 1998), and Scottsdale Ins. Co. v. Robertson, 788 NE 2d 279 (App. Ct. Ill. 2003), the District Court granted summary judgment for the insurer, concluding that the parents' claims were based on one occurrence during a single policy period and determining that the insurer's liability could not exceed $300,000. On appeal, the Montana Supreme Court affirmed the District Court decision and adopted the "cause" theory used by a majority of courts for interpreting the term "occurrence" in an insurance policy that limits the insurer's liability to a specified amount for each "occurrence" instead of the number of injuries or claims. Heggem v. Capitol Indem. Corp., 2007 MT 74, 336 M 429, 154 P3d 1189 (2007).

Standard of Good Faith and Fair Dealing Applicable to Self-Insurer: A fire, caused by a floating power line owned and maintained by Montana Power Company (MPC) destroyed plaintiff's home and property. In filing a negligence action against MPC, plaintiff also alleged that MPC had breached an implied covenant of good faith and fair dealing and violated Title 33, ch. 18, commonly known as the Unfair Trade Practices Act (Act) in the settlement of plaintiff's claim. At trial, the jury was instructed that duties described in the Act applied to MPC. On appeal, MPC argued that the District Court erred, contending that the Act does not apply to a self-insurer such as MPC. The Supreme Court ruled that while the Act does not apply to MPC, "a self-insurer, such as MPC which has a claims department, is held to a standard of good faith and fair dealing when settling claims against it". Ogden v. Mont. Power Co., 44 St. Rep. 330 (1987); on reconsideration, opinion withdrawn and replaced by a holding that the Montana Insurance Code's Unfair Trade Practices Act does not apply to a self-insured entity. Ogden v. Mont. Power Co., 229 M 387, 747 P2d 201, 44 St. Rep. 2068 (1987), followed in Martel v. Mont. Power Co., 231 M 96, 752 P2d 140, 45 St. Rep. 460 (1988).

33-18-102. Unfair methods or deceptive practices prohibited — refusal to renew.

Compiler's Comments

1983 Amendment: In middle of (2), after "organization" inserted "including a mutual insurer formed to provide insurance to the members of an association or organization".

1981 Amendment: Added (2) authorizing nonrenewal for nonpayment.

33-18-103. Protection of active duty members of armed forces — rulemaking authority.

Compiler's Comments

Effective Date: Section 3, Ch. 333, L. 2007, provided that this section is effective on passage and approval. Approved April 27, 2007.

Administrative Rules

Title 6, chapter 6, subchapter 9, ARM Military sales practices.

Part 2
Insurer's Relations With Insured and Claimant

33-18-201. Unfair claim settlement practices prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 6.6.201 through 6.6.210 Life insurance solicitation — authority.

ARM 6.6.506 Prohibited policy provisions — Medicare supplements.

ARM 6.6.1701 General business practice or general course of business practice.

ARM 6.6.3301 through 6.6.3304 Prohibiting unfair discrimination for previously uninsured personal automobile insurance applicants.

Case Notes

General 401
Duty to Defend 418
Duty to Settle 421

GENERAL

Unfair Trade Practices Act Standards — District Court Did Not Abuse Discretion for Refusal to Allow Evidence of Other Settlement Amounts Paid by Insurer — Reasonable Basis for Adjustor Disputing Causation and Severity of Injuries. Humes v. Farmers Ins. Exch., 2022 MT 148, 409 Mont. 295, 514 P.3d 417.

Estoppel Improperly Held When District Court Substantively Addressed Only Two of Six Elements of Estoppel — Reversed and Remanded for Consideration of All Elements of Estoppel. Rolan v. New West Health Serv., 2022 MT 1, 407 Mont. 34, 504 P.3d 464.

Employee's Bad Faith Conduct Claims Against Railroad Not Preempted by Federal Employers' Liability Act: The plaintiff sustained on-the-job injuries while working for a railroad. He filed a claim under the Federal Employers' Liability Act of 1908 (FELA) and won at trial. The next year, he filed claims in District Court for bad faith and punitive damages against the railroad, relying on the Uniform Trade Practices Act and common law. The railroad argued that the claims were preempted by FELA. The District Court held that the claims were not precluded, and the plaintiff prevailed on a stipulated motion for entry of judgment, with the railroad reserving the right to appeal. On appeal, the Supreme Court affirmed, addressing the railroad's arguments regarding express preemption, field preemption, and conflict preemption and concluding that the plaintiff's bad faith claims were not preempted under any theory of preemption. Dannels v. BNSF Ry. Co., 2021 MT 71, 403 Mont. 437, 483 P.3d 495.

No Duty to Make Advance Payments When Insureds' Liability Not Reasonably Clear: The plaintiff filed a personal injury action on behalf of himself and family members who were injured or killed in a car accident. The complaint demanded that the insurers of the other vehicle's occupants pay out the limits of the bodily injury policy as an advance pursuant to Ridley v. Guar. Nat'l Ins. Co., 286 Mont. 325, 951 P.2d 987 (1997), and Dubray v. Farmers Ins. Exch., 2001 MT 251, 307 Mont. 134, 36 P.3d 897. On a complaint for interpleader and declaratory relief, one of the insurers asserted that it was not obligated to make advance payments because the insureds' liability was not yet reasonably clear due to the ongoing nature of the investigation. The District Court agreed with the insurer and denied the motion to release the interpleaded funds. The case was settled, but several years later the plaintiff filed a new complaint alleging bad faith claims under the Unfair Trade Practices Act related to the insurers' failure to pay the requested advances. The District Court dismissed, finding that the original court had properly concluded that liability in the accident was not reasonably clear and therefore no statutory unfair claims handling or common law bad faith claims were viable. On appeal, the Supreme Court affirmed, finding that the insureds' liability was not reasonably clear and that denial of the demand for advance payments was therefore proper. Shepard v. Farmers Ins. Exch., 2020 MT 320, 402 Mont. 359, 477 P.3d 1114.

Stipulated Settlement — Covenant Not to Execute on Defendant — Order Approving Settlement Based on Erroneous Finding Insurer Had Abandoned Its Insured Reversed: The plaintiff brought claims against an accounting firm seeking damages related to tax advice on a 1031 exchange. The accounting firm's insurer provided defense counsel; however, it reserved its right to challenge coverage for some of the claims and later refused to settle the claim for policy limits. The accounting firm independently entered into a stipulation with the plaintiff and agreed to a $10 million settlement with a covenant not to execute against the accounting firm. The insurer moved to intervene, arguing that it had not breached its duty to defend the case by not agreeing to pay policy limits. It also argued that the settlement amount was not reasonable. The District Court held that the insurer had abandoned the accounting firm and found the settlement reasonable. On appeal, the Supreme Court reversed, holding that the District Court improperly held that the insurer had abandoned the accounting firm because it had provided a defense throughout the proceedings. The court also concluded that the amount of the damages could not be considered fair and reasonable and accordingly reversed and remanded the case. Draggin' Y Cattle Co., Inc. v. Junkermier, 2019 MT 97, 395 Mont. 316, 439 P.3d 935.

Failure of District Court to Dismiss Case — Unfair Trade Practices Claim Not Precluded by Insurance Settlement — Collateral Source Reduction Subject to Review: The District Court erred in granting the defendants' motion to dismiss by relying on Miller v. St. Farm Mut. Auto. Ins. Co., 2007 MT 85, 337 Mont. 67, 155 P.3d 1278, and concluding as part of a declaratory judgment action that a justiciable controversy did not exist. Unlike Miller, the plaintiff was litigating a claim under existing rights or interests provided for in the Unfair Trade Practices Act (UTPA). The plaintiff and the defendants, two insurance companies, entered into and completed a settlement. Once the defendant insurers entered into a settlement with the plaintiff, the insurers became subject to the UTPA. Under the UTPA, insurers have duties and obligations regarding their settlement practices to an insured or third-party claimant. Thus, the parties had existing and genuine rights arising from the UTPA. The first requirement to find a justiciable controversy under the Uniform Declaratory Judgments Act therefore was met. A judgment in the plaintiff's case would determine the parties' rights, status, or legal relationship by deciding whether the defendant insurers reduced the plaintiff's damages by applying the collateral source statute pursuant to 27-1-308. Assuming the defendant insurers unlawfully reduced the plaintiff's damages by relying on the collateral source rule, the plaintiff would be able to seek recovery. Marshall v. Safeco Ins. Co., 2018 MT 45, 390 Mont. 358, 413 P.3d 828, distinguishing Miller v. St. Farm Mut. Auto. Ins. Co., 2007 MT 85, 337 Mont. 67, 155 P.3d 1278.

Unfair Trade Practices Act Claim Concerning Settlement — Plea for Motion to Dismiss Sufficient: Taking the plaintiff's complaint as true for purposes of a motion to dismiss, the District Court erred by concluding that the plaintiff did not sufficiently plead a claim under the Unfair Trade Practices Act for which relief may be granted. The District Court failed by determining whether the defendants, two insurance companies, acted reasonably absent a determination that the defendants' reasonable basis was solely grounded on a legal conclusion and no issues of fact remained in dispute. Even if the defendants had a reasonable basis to apply the collateral source statute, the District Court failed to consider the plain language of the collateral source statute and whether it was applicable in the plaintiff's case. Marshall v. Safeco Ins. Co., 2018 MT 45, 390 Mont. 358, 413 P.3d 828, distinguishing Miller v. St. Farm Mut. Auto. Ins. Co., 2007 MT 85, 337 Mont. 67, 155 P.3d 1278.

Motor Vehicle Accident — Disputed Causation of Damages — Declaratory Action Inappropriate: The plaintiff filed a declaratory action resulting from a vehicle accident in which she was injured. Although it paid initial medical costs, the defendant insurer subsequently disputed that the accident caused the plaintiff's damages. The District Court determined that a declaratory action was appropriate, that the plaintiff's damages were causally related to the accident, that the opinions of the defendant's experts did not create a disputed issue of material fact, and that the defendant's experts lacked foundation. On appeal, the Supreme Court reversed, holding that declaratory actions are an inappropriate method to adjudicate disputed issues of material fact and that the case presented material disputes relating to causation of the plaintiff's damages. Teeter v. Mid-Century Ins. Co., 2017 MT 292, 389 Mont. 407, 406 P.3d 464.

ERISA — Motion to Amend Answer — Abuse of Discretion for Granting Insurance Company Leave to Amend — Undue Prejudice to Class Not Considered — No Reasonable Justification Presented by Insurance Company: The District Court abused its discretion by granting the defendant insurance company leave to amend its answer to assert Employee Retirement Income Security Act (ERISA) preemption. The Supreme Court reasoned there were no extraordinary circumstances that would warrant granting the defendant's motion to amend. The plaintiff and the class cited to three specific reasons prejudice would occur: (1) the length of the delay, (2) the parties had conducted extensive discovery, and (3) the case had already been appealed to the Supreme Court for class certification based on state law claims. Conversely, the defendant did not offer any reasonable justification for the delay. Allowing the defendant to amend to include ERISA preemption would have effectively destroyed the class, forcing the plaintiff and the class to either seek recertification based on ERISA claims or proceed alone, 10 years after the plaintiff's injury and more than 7 years after she filed suit. Consequently, the Supreme Court held that the plaintiff and the class she represented would be unduly prejudiced by allowing the defendant to amend and that the District Court conducted an inadequate inquiry of the extraordinary circumstances of the case. Rolan v. New W. Health Servs., 2017 MT 270, 389 Mont. 228, 405 P.3d 65. See also Bitterroot Int'l Sys., Ltd. v. W. Star Trucks, Inc., 2007 MT 48, 336 Mont. 145, 153 P.3d 627, and Peuse v. Malkuch, 275 Mont. 221, 911 P.2d 1153 (1996).

Interpleader Action — Avoidance of Unfairness and Race to Judgment — Insurer Allowed to Interplead All Proceeds Despite Other Judgments: The District Court correctly determined that an interpleader action was intended to distribute all available commercial insurance proceeds and that the res, which was the object of the interpleader, was "all available insurance proceeds". The Supreme Court reasoned that Montana's rule interpleader is an equitable remedial device that exists in order to avoid the unfairness that may result to some claimants who have competing claims to the interpleader res but who lose the race to judgment. The conclusion reached by the District Court was consistent with its equitable role of determining the intent of the court and parties when the interpleader proceeding was initially filed. The existence of judgments against the insured and issuance of writs of execution against the policy proceeds did not preclude the insurer from interpleading all insurance proceeds for the purpose of apportioning funds equitably and fairly among the competing claimants. Assoc. Dermatology & Skin Cancer Clinic v. Fitte, 2016 MT 349, 386 Mont. 150, 388 P.3d 632.

Boulder Considered "Earth Movement" Under Policy — Coverage Excluded: After a large boulder damaged the plaintiff's cabin and the insurer refused coverage, the plaintiff filed an action in District Court. The insurer claimed that the boulder was considered "earth movement," which was explicitly excluded under the policy. The plaintiff argued that because no soil had been disturbed at the site from where the boulder originated it could not be considered earth movement. The District Court granted summary judgment in favor of the insurer, and the plaintiff appealed. The Supreme Court affirmed, ruling that the District Court correctly concluded that the term "earth" as used in the policy was intended to broadly include all natural materials that compose the earth's surface, including the boulder. Parker v. Safeco Ins. Co. of America, 2016 MT 173, 384 Mont. 125, 376 P.3d 114. See also Loendorf v. Employers Mut. Cas. Co., 2022 MT 143, 409 Mont. 248, 513 P.3d 1268.

Excess Insurer's Policy Ambiguous — General Aggregate Term Not Defined — Duty to Indemnify and Defend — Attorney Fees: In a declaratory action relating to a gasoline spill from a leased truck onto several homeowners' land, the plaintiff, an insurer providing excess insurance, argued that its $4 million policy limit had been met. The excess insurance policy provided limits of $4 million for each occurrence and stated a $4 million "general aggregate" that was not defined. The plaintiff argued that the "general aggregate" provided a $4 million total limit for all coverages under the policy. The District Court disagreed, finding that because the policy did not define the term "general aggregate," when taken as a whole the policy was reasonably subject to at least two interpretations. The District Court then construed the policy against the plaintiff, awarding an additional $4 million in coverage and holding that the defendants, the homeowners, were entitled to attorney fees because the plaintiff breached its duties to indemnify and defend. On appeal, the Supreme Court affirmed in part, agreeing that the policy was ambiguous and that the award of attorney fees was proper because the plaintiff breached its duty to indemnify. However, the Supreme Court reversed the District Court's determination that the plaintiff breached its duty to defend because the plaintiff resumed its respective duties after the defendants argued for the additional $4 million in coverage. Westchester Surplus Lines Ins. Co. v. Keller Transp., Inc., 2016 MT 6, 382 Mont. 72, 365 P.3d 465.

Damages Under Breach of Contract Claims Considered Compensatory Damages Under Unfair Trade Practices Act for Pursuit of Punitive Damages: In an insurance dispute in which plaintiffs sued the defendant insurer to contest the denial of untimely filed claims, the District Court erred in instructing the jury that it must first find Unfair Trade Practices Act (UTPA) damages beyond the breach of insurance contract damages in order to consider malice and punitive damages under the UTPA. When an insurer is found to have violated the UTPA, damages due to the breach of insurance contract may constitute compensatory UTPA damages sufficient to present the question of malice and punitive damages to the jury. Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

Erroneous Application of Statute of Limitations — Insurance Dispute: In an insurance dispute in which plaintiffs sued the defendant insurer to contest the denial of untimely filed claims, the District Court erred in applying the statute of limitations from the date the plaintiffs submitted their claim to the insurer rather than from the date the lawsuit was filed. The accrual of a claim does not depend on when a claim is submitted to an insurer; rather, a claim accrues when all elements of that claim have occurred. Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

Notice-Prejudice Rule Applicable in First-Party Insurance Coverage: The notice-prejudice rule applies to first-party insurance coverage disputes. Under this rule, an insurer may deny coverage based on an insured's failure to comply with a policy notice provision only if the insurer can demonstrate that it was prejudiced by the late notice. Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

Duplicate Payments Allowed Under Insurance Policy Language: Plaintiff was injured while working on his vehicle. He had a medical insurance policy and a separate motor vehicle policy with a medical payment provision. The medical insurer paid most of the claim. The plaintiff then sought payment of the entirety of the claim from the motor vehicle insurer, who denied the claim. The plaintiff alleged breach of contract and unfair trade practices. The Supreme Court found that the policy language did not limit the plaintiff from receiving a duplicate payment of medical expenses and that there was no basis in contract law, insurance law, or public policy that would prohibit such recovery. Winter v. St. Farm Mut. Auto. Ins. Co., 2014 MT 168, 375 Mont. 351, 328 P.3d 665. See also Cramer v. Farmers Ins. Exch., 2018 MT 198, 392 Mont. 329, 423 P.3d 1067, holding that where there is no clear and unambiguous policy language permitting an insurance company to offset its underinsured motorist obligation dollar-for-dollar with another company's underinsured motorist payment, the insurance company must pay its full contractual pro rata share of damages, even if another insurer has overpaid its share.

Accident Reconstruction Expert Testimony in Bad Faith Insurance Action Properly Excluded: In a bad faith insurance action filed pursuant to the Montana Unfair Trade Practices Act (UTPA), the defendant insurer hired an expert to reconstruct the accident scene. The results of the reconstruction were admitted at trial through the claims file and the insurer sought to introduce testimony from the expert. The District Court did not err in denying the expert's testimony since the information had already been introduced through the claims file. Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, 357 Mont. 293, 239 P.3d 904.

Evidence Not Admitted in Previous Negligence Action Admissible to Show UTPA Violation — No Error by District Court: In a bad faith insurance claim, the District Court allowed the defendant insurer to introduce evidence of a lack of traffic citations, evidence from responding Highway Patrol officers regarding the point of impact, and testimony about the insured's prior driving activity. The evidence had been prohibited from introduction in a federal District Court action on the negligence claim. Distinguishing its holding in Britton v. Farmers Ins. Group, 221 Mont. 67, 721 P.2d 303 (1986), the Supreme Court held that in making a determination under the Montana Unfair Trade Practices Act (UTPA), the jury was entitled to evaluate the evidence because it informed the insurer's assessment of the claim and aided the jury's determination of whether a reasonable person, with knowledge of the relevant facts and law, would conclude, for good reason, that the insured was liable for the accident. Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, 357 Mont. 293, 239 P.3d 904.

Failure to Define "Reasonably Clear" Liability in Jury Instruction — Reversible Error: The plaintiff, who was injured in a head-on automobile collision, filed a third-party bad faith insurance claim against the defendant insurer under the Montana Unfair Trade Practices Act (UTPA). The plaintiff claimed that the District Court committed reversible error by failing to adequately instruct the jury on the definition of "reasonably clear" liability under UTPA. The Supreme Court reversed and remanded and held that the error in the instruction affected the jury's ability to determine whether the insurer violated UTPA. The Supreme Court adopted a standard for determining when liability is "reasonably clear" for purposes of UTPA, which is "when a reasonable person, with knowledge of the relevant facts and law, would conclude, for good reason, that the defendant is liable to the plaintiff." The Supreme Court noted that this is an objective test in which the trier of fact must consider the facts and circumstances and the relevant legal principles considered by the insurer when evaluating liability. In addition, following courts in Massachusetts and West Virginia, the Supreme Court held that liability is "reasonably clear" when "it is "clear enough" that reasonable people assessing the claim would agree on the issue of liability, and that the facts, circumstances, and applicable law leave little room for objectively reasonable debate about whether liability exists." Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, 357 Mont. 293, 239 P.3d 904.

No Error in Refusal to Instruct Jury in UTPA Claim — Proposed Instructions Properly Denied: In a bad faith insurance claim filed pursuant to the Montana Uniform Trade Practices Act (UTPA), the plaintiff sought a jury instruction stating in part that a person shall operate a vehicle at a reduced speed no greater than is reasonable and prudent. The plaintiff also sought an instruction stating that "the lack of any traffic citations does not equate to the lack of civil negligence." The District Court did not err in refusing the instructions since the ultimate issue in the bad faith insurance case was the reasonableness of the insured's conduct. Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, 357 Mont. 293, 239 P.3d 904.

Offer of Judgment in Federal Court Not Admission of "Reasonably Clear" Liability under UTPA: The plaintiff claimed that the District Court erred when it concluded as a matter of law that the defendant insurer's offer of judgment in federal District Court did not constitute an admission for purposes of establishing "reasonably clear" liability under the Montana Unfair Trade Practices Act (UTPA). The Supreme Court held that an offer of judgment may constitute an admission of liability for the underlying accident in some circumstances, but it does not constitute an admission of "reasonably clear" liability or have preclusive effect with respect to UTPA. Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, 357 Mont. 293, 239 P.3d 904.

Refusal to Instruct Jury on Theory That Attorney Acted as Agent of Insurer Proper — Insured Is Sole Client of Defense Counsel: The plaintiff was injured in a head-on automobile collision with the insured. At the time of the accident, the insured worked for a Canadian company operating in Montana and was insured by the defendant insurer. The plaintiff filed suit against the company in federal District Court after the defendant insurer refused to pay the plaintiff's claims. The plaintiff ultimately accepted an offer of judgment and thereafter filed a bad faith insurance claim against the insurer in state court. Prior to trial, the plaintiff filed a motion in limine arguing that the attorney for the insurer acted as the insurer's agent in his defense of the underlying federal court negligence suit. The District Court denied the motion and a corresponding jury instruction on the issue. The plaintiff alleged that the District Court erred by refusing to instruct the jury on the theory that an attorney who was hired by the insurer to handle the defense of the employer in the underlying negligence claim acted as the agent of the insurer in the denial of the claim. In the claims file, the attorney noted that the insured employee was at least 50% liable for the accident. Under In re Rules, 2000 MT 110, 299 Mont. 321, 2 P.3d 806, in which the Supreme Court held that the insured is the sole client of defense counsel, the District Court did not abuse its discretion in denying the instruction. Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, 357 Mont. 293, 239 P.3d 904.

Strict Recitation of UTPA Statutory Language Not Required in Jury Instruction: Defendant insurer asserted that the District Court erred in giving a jury instruction concerning plaintiff's Montana Unfair Trade Practices Act (UTPA) common-law bad faith claim by substituting the word "claims" for the statutory reference to "coverages", resulting in prejudice to defendant. The Supreme Court first noted that there is no requirement that a District Court adopt verbatim the applicable statutory language when instructing the jury, as long as any modification does not alter the meaning of the statute and the District Court maintains conformity with the law while remaining appropriate in the factual context of the case. In this case, the District Court did not change the meaning of the statute, and because the submission and processing of insurance claims is a more fact-driven process than the issue of insurance coverage, there was no error in including a reference to claims within the purview of the UTPA statutory prohibition in 33-18-201. Jacobsen v. Allstate Ins. Co., 2009 MT 248, 351 M 464, 215 P3d 649 (2009).

Eventual Payment of Claim Not Decisive of Whether Insurer Acted in Good Faith in Effectuating Settlement: Defendant moved for summary judgment on the issue of failure to act in good faith to effectuate prompt settlement of plaintiffs' claim because the claim was paid within a few months of denial of the claim. The Supreme Court held that eventual payment of a claim is not the conclusive factor in determining the good faith issue because an insurer could then summarily deny or ignore a claim that it was clearly obligated to pay and then escape liability by issuing payment after the claimant took steps to enforce the claimant's rights, which would create a financial incentive for unscrupulous insurers to disregard the duty of good faith during the initial stages of a claim. Thus, when an insurer wrongfully denies a claim, subsequent payment of the claim does not establish that the insurer complied with the duty of good faith. Therefore, the fact that the claim was eventually paid does not create an absence of genuine issues of material fact. The issue of breach of the duty to act in good faith was instead one for a jury to decide, and summary judgment for the insurer was inappropriate. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008), followed in McVey v. USAA Cas. Ins. Co., 2013 MT 346, 372 Mont. 511, 313 P.3d 191.

Failure to Conduct Reasonable Investigation of Insurance Claim — Summary Judgment Proper: Plaintiffs brought an unfair trade practices claim based on defendant insurer's failure to conduct a reasonable investigation prior to denying plaintiffs' claim for medical expenses.

The District Court held that defendant's wrongful denial did not prove that its investigation was unreasonable and that any wrong was promptly cured by defendant's payment of the claim and granted summary judgment for defendant on the claim. On appeal, the Supreme Court disagreed. The reasonableness of an investigation requires that the investigating adjuster examine the pertinent information thoroughly enough to retain and act upon it. In this case, the adjuster had access to plaintiffs' extensive file containing a record of plaintiffs' numerous prior claims for similar medical expenses, defendant's initial denial of those claims, intervention by the Insurance Commissioner on plaintiffs' behalf, defendant's ultimate admission of liability and eventual payment of those claims, and a note in plaintiffs' file that plaintiffs' claims were not to be denied on the basis of the unavailability of policy coverage, yet the adjuster failed to research the records and instead denied the claim. Therefore, plaintiffs were entitled to partial summary judgment on the issue of defendant's failure to conduct a reasonable investigation and the District Court was reversed. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008). See also McVey v. USAA Cas. Ins. Co., 2013 MT 346, 372 Mont. 511, 313 P.3d 191.

Insurer's Liability for Misrepresentation of Policy Provisions: Plaintiffs submitted a claim for medical expenses, and even though the insurer had paid similar claims on several prior occasions under the same policy, the insurer denied the claim, so plaintiffs sued for misrepresentation of the policy provisions. The District Court granted the insurer's motion for summary judgment on grounds that: (1) there was no intent by the insurer to misrepresent the policy coverage; (2) the insurer refuted any alleged intent to misrepresent by paying the claim after the misrepresentation occurred; and (3) plaintiffs' claim was not actionable because plaintiffs knew that the statement denying coverage was false. On appeal, the Supreme Court rejected the insurer's arguments. First, 33-18-201 does not distinguish between intentional and unintentional misrepresentation, but rather prohibits misrepresentation categorically, so the issue of whether an insurer intended to misrepresent policy provisions is not a factor. Second, an insurer's conduct after a misrepresentation has no connection to whether a misrepresentation actually occurred. Third, 33-18-201 contains no exceptions for misrepresentations made to claimants who accurately comprehend the meaning of a policy. Rather, the statute is intended to protect all claimants, regardless of their level of knowledge regarding the policy, so a claimant's knowledge regarding the veracity of the insurer's statement concerning policy coverage is irrelevant in determining whether a misrepresentation occurred. Therefore, the District Court erred in granting the insurer's summary judgment motion on the misrepresentation claim. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008).

In McVey v. USAA Cas. Ins. Co., 2013 MT 346, 372 Mont. 511, 313 P.3d 191, the Supreme Court held that the fact that a claim is filed by someone other than the insured does not preclude the insured from invoking the protections of 33-18-201(4) and 33-18-242 and clarified that the reference in Lorang to a "claimant" did not intend to control the scope of the protections provided or otherwise bar an insured from pursuing a claim pursuant to these statutes.

Settlement Not Limited to Compromise Agreements Only: Plaintiffs brought an unfair trade practices claim against defendant insurer for failure to act in good faith in settling plaintiffs' claim. Defendant asserted that a settlement, as used in this section, applied only to compromise agreements. The Supreme Court disagreed. A settlement encompasses both the preliminary payment of individual claims and the final settlement of all claims. The court declined to narrow a settlement to only compromise agreements. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008), following Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997).

Admissibility of Minor Death Verdicts Chart in Unfair Trade Practices Trial: At numerous times during an unfair trade practices trial against an insurer for not reasonably settling an underlying medical malpractice claim, the insurer made reference to and presented a chart summarizing child death verdicts in Montana. The insurer argued that Montana juries have not generally ruled in favor of plaintiffs who seek damages for the death of their children and asserted that this information was of consequence during settlement procedures. A verdict was eventually returned for the insurer, and on appeal, plaintiffs argued that the chart was irrelevant, prejudicial, and inadmissible hearsay. The Supreme Court disagreed. The evidence was offered to demonstrate that knowledge of past verdicts and settlements was critical to the insurer when evaluating malpractice claims and that the evidence provided a basis on which to generate settlement offers and counteroffers. Any prejudicial effect of the chart was outweighed by its probative value because the trial was about the process used by the insurer before entering a settlement. Peterson v. The Doctors' Co., 2007 MT 264, 339 M 354, 170 P3d 459 (2007).

Overly Broad Discovery Request for All of Plaintiffs' Counsels' Files Properly Denied in Unfair Trade Practices Case: Plaintiffs asserted that defendant insurance company committed unfair trade practices in settling plaintiffs' claim against two insured doctors for malpractice. In discovery, the insurer sought to compel production of all of plaintiffs' attorneys' files, claiming that information regarding how plaintiffs valued their own case was relevant as to whether the insurer committed an unfair trade practice. The District Court determined that information in plaintiffs' attorneys' files was per se irrelevant to the question of whether the insurer negotiated in good faith. On appeal, the Supreme Court noted that in most unfair trade practices cases, the conduct of the claimant or how the claimant evaluated its own case is irrelevant concerning how the insurer acted, so evidence of the claimant's conduct is generally undiscoverable unless the claimant acts in a way that delays or impairs the insurer's ability to settle (see Spadaro v. Midland Claims Serv., Inc., 227 M 445, 740 P2d 1105 (1987)). Thus, the District Court's ruling that all of plaintiffs' attorneys' files were per se undiscoverable was an overbroad basis on which to deny the discovery request. However, to prevent "fishing expeditions" by an insurer, a discovery request must be narrowly tailored to the insurer's defenses against the claims, and in this case, the request for all of the attorneys' files was far broader than necessary to discover information regarding plaintiffs' alleged delay and impairment of the insurer's ability to settle, so the Supreme Court deferred to the District Court's discovery discretion and held that it was not error to refuse disclosure of all of the attorneys' files. Peterson v. The Doctors' Co., 2007 MT 264, 339 M 354, 170 P3d 459 (2007).

Genuine Issue of Fact Regarding Unfair Trade Practices and Punitive Damages in Insurance Case — Summary Judgment Precluded: Following an auto accident, Shelton filed claims under her insurance policy for medical payments and underinsured motorist coverage. After several unsuccessful attempts at settlement, Shelton amended the complaint 4 years after the accident to add claims for punitive damages and bad faith. The parties agreed to bifurcate the punitive damages and bad faith claims from the underinsured motorist claim. Citing 33-18-242(5), the insurer moved for summary judgment on the punitive damages and bad faith claims on grounds that the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim. The District Court found, with respect to the bad faith claim, that Shelton did not present any material fact that precluded summary judgment and, with regard to the punitive damages claim, that Shelton admitted that there was no factual basis for a claim of malice and that there was no evidence of fraudulent behavior by the insurer. Summary judgment was granted to the insurer, and Shelton appealed. The Supreme Court reversed. Shelton provided evidence tending to show that the insurer failed to collect necessary records and reports and failed to share the information among its own experts, neglected to attempt in good faith to effectuate a settlement, and may have acted with malice in failing to pay Shelton the minimum amount of money that it determined that Shelton deserved. These questions of material fact precluded summary judgment, and the case was remanded for further proceedings. Shelton v. St. Farm Mut. Auto. Ins. Co., 2007 MT 132, 337 M 378, 160 P3d 531 (2007).

Failure of District Court to Rule Whether Collateral Source Reduction Applicable During Settlement Negotiations — Declaratory Judgment Inappropriate Absent Justiciable Controversy: Miller sought a declaratory judgment in District Court concerning whether 27-1-308 regarding collateral source reduction could be applied by insurance companies when evaluating cases and making settlement offers. Miller's motion for a declaratory judgment was denied, and on appeal, the Supreme Court affirmed. Before a court may exercise declaratory judgment jurisdiction, a justiciable controversy must exist. Seeking a declaratory judgment too early in the proceedings, when other remedies are still available, may amount to an advisory opinion. Here, Miller was requesting the District Court to interject its opinion regarding what factors and circumstances parties may consider in negotiating a settlement. As a matter of state policy, settlement is encouraged, and once a settlement is reached, courts can enforce the agreement. Insurers have a duty to attempt in good faith to negotiate prompt, fair, and equitable settlements in cases in which liability is reasonably clear. In this case, a dispute existed over the settlement amount, but there was no justiciable controversy regarding the existing and genuine rights or interests of the parties. Neither party was legally obligated to settle, nor can a court dictate what factors a party may or may not consider while engaging in a voluntary settlement process. Absent a justiciable controversy, a declaratory judgment was inappropriate. Miller v. St. Farm Mut. Auto. Ins. Co., 2007 MT 85, 337 M 67, 155 P3d 1278 (2007), following Northfield Ins. Co. v. Mont. Ass'n of Counties, 2000 MT 256, 301 M 472, 10 P3d 813 (2000), and distinguishing Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997).

Adoption of "Cause" Interpretation of "Occurrence" Provision In Action Regarding Unfair Trade Practices Statutes — Summary Judgment Properly Granted: The parents of a 13-month-old child who died as a result of a toxic dose of medication administered by a day-care facility, filed an action claiming that the insurer's offer of $300,000 misrepresented the insurance policy liability limit in violation of Montana's unfair trade practices statutes. The parents alleged that their actions against the day-care center and the individual administering the drug entitled them under their third-party rights to twice the policy limit under an aggregate limits provision in the policy for "all occurrences". Relying on the policy language and the analysis in Greaves v. St. Farm Ins. Co., 984 F. Supp. 12 (D.D.C. 1997), affirmed in 172 F3d 919 (C.A.D.C. 1998), and Scottsdale Ins. Co. v. Robertson, 788 NE 2d 279 (App. Ct. Ill. 2003), the District Court granted summary judgment for the insurer, concluding that the parents' claims were based on one occurrence during a single policy period and determining that the insurer's liability could not exceed $300,000. On appeal, the Montana Supreme Court affirmed the District Court decision and adopted the "cause" theory used by a majority of courts for interpreting the term "occurrence" in an insurance policy that limits the insurer's liability to a specified amount for each "occurrence" instead of the number of injuries or claims. Heggem v. Capitol Indem. Corp., 2007 MT 74, 336 M 429, 154 P3d 1189 (2007).

Attorney Fees Not Recoverable Under Unfair Trade Practices Provisions: When plaintiffs were injured in a collision with a vehicle insured by defendant, they offered to settle their bodily injury claims for $125,000, but the insurer refused. After plaintiffs spent about $43,500 in attorney fees, the insurer settled for $125,000. Plaintiffs then sought to recover their attorney fees under the unfair trade practices provisions of Title 33, ch. 18, but summary judgment was granted to the insurer, so plaintiffs appealed. The Supreme Court affirmed. Although it could have done so, the Legislature did not construct the unfair trade practices provisions to specifically provide for the recovery of attorney fees. The court recognized the seeming unfairness of plaintiffs having to pay $43,500 to recover the same amount of money that they were willing to accept in the first place, but the court declined to construe the provisions to allow attorney fees to be considered as damages when the Legislature did not do so. Sampson v. Nat'l Farmers Union Property & Cas. Co., 2006 MT 241, 333 M 541, 144 P3d 797 (2006), distinguished in Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

Subrogation Claim for Environmental Remediation Costs Barred by Statute of Limitations: The Montana Petroleum Tank Release Compensation Board submitted a claim to a gas station owner's insurer for reimbursement of environmental remediation expenses. The claim was denied, and the Board filed an action against the owner's insurer and the insurer of a subsequent lessee. In its denial letter, one insurer asserted that because 12 years elapsed before the Board brought its claim, the statute of limitations had run on the claim. The District Court granted summary judgment to both insurers, and the Board appealed. The Supreme Court noted that even if the Board had a claim against the lessee's insurer through subrogation of the owner's insurer's rights, the statute of limitations began to run from the time that all the elements accrued for the owner's insurer to file a claim with the lessee's insurer. The longest possible statute of limitations that could apply was 8 years, so the lessee's insurer was correct that any claim that the Board may have had against it was barred by the statute of limitations. Mont. Petroleum Tank Release Comp. Bd. v. Capitol Indem. Co., 2006 MT 133, 332 M 352, 137 P3d 522 (2006).

Policy of Reimbursement of Nonparticipating Health Care Providers — Violation of Unfair Trade Practices Act: A federal employee who was not reimbursed for the full amount of a medical procedure sued Blue Cross in federal court, alleging various state common-law causes of action and alleging that Blue Cross violated this chapter, commonly known as the Unfair Trade Practices Act, by misrepresenting its policy regarding reimbursement of nonparticipating health care providers. The District Court dismissed the suit against Blue Cross for lack of jurisdiction, ruling that the complaint was a contract dispute and not a dispute involving federal law. On appeal, the Ninth Circuit Court reversed, ruling that the federal remedies available under the Federal Employees Health Benefits Act of 1959 displaced Montana's remedies under this chapter. As a result, the employee's claim was completely preempted. Botsford v. Blue Cross & Blue Shield of Mont., Inc., 314 F3d 390 (2002).

Improper Assumption That Defense Verdict in Underlying Negligence Action Precludes Subsequent Unfair Trade Practices Claims — Reversible Error: Plaintiff was involved in an automobile accident when an employee of the Goosebill Ranch struck a vehicle driven by the Cloutiers and then struck plaintiff's vehicle, which was pushed across an intersection and collided with a truck that was proceeding through the intersection. Plaintiff sued Goosebill Ranch for negligence, but the jury returned a verdict for the ranch, and plaintiff appealed. The Cloutiers also sued Goosebill Ranch in a separate action, and in that case, the jury found that the ranch was negligent and awarded the damages to the Cloutiers. The damages were paid by the defendant insurance company. While appeal of plaintiff's negligence case was pending, plaintiff settled, and the judgment against plaintiff was released as part of the settlement, but plaintiff reserved the right to bring a bad faith action against that insurer. Plaintiff then brought an unfair trade practices claim against the insurers, asserting violation of 33-18-242 and alleging claims for outrage or intentional infliction of severe emotional distress. The District Court held that the initial jury verdict for Goosebill Ranch provided the insurers with a reasonable basis defense to plaintiff's subsequent unfair trade practices claim and that plaintiff could not bring a statutory bad faith action claiming liability was reasonably clear when the jury had decided the opposite, so plaintiff's claim was dismissed. On appeal, the Supreme Court reversed. The District Court's assumption that the unfair trade practices claim sought to relitigate the underlying claim and that the issues in both claims were the same was incorrect because the issues were in fact separate. An unfair trade practices claim is considered an independent cause of action. The District Court's reasoning that an unfair trade practices claimant must first establish liability in an underlying claim and that an adverse jury verdict defeats the claim was also erroneous because under 33-18-242, a settlement of the underlying claim is sufficient to allow an unfair trade practices claim, and a defense verdict in the underlying negligence suit was not tantamount to a finding that the insurer did not engage in unfair trade practices. Further, a ruling that a defense verdict provided a reasonable basis defense to a subsequent unfair trade practices claim as a matter of law was also erroneous because insurers would then be encouraged to obtain defense verdicts at any cost to shield themselves from subsequent unfair trade practices claims. Thus, a defense verdict in the underlying negligence claim did not collaterally estop plaintiff from pursuing an unfair trade practices claim. Last, plaintiff's failure to raise the issue of insurer misconduct in a motion under former Rule 60(b), M.R.Civ.P. (now superseded), in the underlying negligence case did not preclude pursuit of an unfair trade practices claim because the unfair trade practices claims were not litigated in the underlying case and were not issues that should have been litigated in the negligence suit for personal injuries. Graf v. Cont. W. Ins. Co., 2004 MT 105, 321 M 65, 89 P3d 22 (2004). See also Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834 (2000), and Rausch v. Hogan, 2001 MT 123, 305 M 382, 28 P3d 460 (2001).

Limitation of Action — Workers' Compensation Third Party and Bad Faith Claims: A third-party claimant may not bring an action pursuant to Title 33, ch. 18, commonly known as the Unfair Trade Practices Act, until the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim. The statute of limitations on such a claim is 1 year from the date of settlement or entry of judgment on the underlying claim, even though the Act does not define what constitutes an underlying claim. A common-law bad faith claim accrues when: (1) all of the elements of the claim or cause exist or have occurred; (2) the right to maintain an action on the claim or cause is complete; or (3) a court or other agency is authorized to accept jurisdiction of the action. The statute of limitations for a common-law bad faith claim is 3 years and begins to run when the claim or action accrues. The accrual date of a bad faith claim arising out of a separate and independent disputed issue is established by determining whether that particular issue has been ultimately resolved, regardless of the existence or absence of a resolution of other issues within the workers' compensation case. Therefore, for statute of limitations purposes, statutory and common-law bad faith claims against an insurer that are predicated on actions taken in adjusting a workers' compensation claim accrue when the Workers' Compensation Court enters a judgment ordering the insurer to pay for a previously denied benefit but leaves unresolved the ultimate determinations of the extent and duration of the worker's disability. O'Connor v. Nat'l Union Fire Ins. Co., 2004 MT 65, 320 M 301, 87 P3d 454 (2004), following Grenz v. Orion Group, Inc., 243 M 486, 795 P2d 444 (1990), Poteat v. St. Paul Mercury Ins. Co., 277 M 117, 918 P2d 677 (1996), and Brewington v. Employers Fire Ins. Co., 1999 MT 312, 297 M 243, 992 P2d 237 (1999), and distinguishing Fode v. Farmers Ins. Exch., 221 M 282, 719 P2d 414 (1986).

No Duty of Insurer to Notify Claimant of Limitation on Workers' Compensation Medical Benefits: Wiard's workers' compensation benefits were terminated because of failure to file a medical claim within the 60-month period required in 39-71-704. Wiard contended that the failure of the insurer to notify him of the statutory limit violated this chapter, commonly known as the Unfair Trade Practices Act, and the implied covenant of good faith and fair dealing. The Supreme Court disagreed. The rights and duties of the parties were imposed by the provisions of the Workers' Compensation Act, and nothing in that Act established an affirmative duty on the insurer to inform Wiard of the 60-month limitation on the duration of his medical benefits. Wiard v. Liberty NW. Ins. Corp., 2003 MT 295, 318 M 132, 79 P3d 281 (2003).

Advance Insurance Payment Not Required When Liability Not Reasonably Clear: Plaintiffs' child was injured when run over by a car while sledding. Plaintiffs moved for summary judgment requiring the driver's insurer to advance payment for the child's medical expenses pursuant to this section. The insurer also moved for summary judgment of the issue, contending that an advance was not required because liability had not been clearly established. The District Court granted summary judgment for the insurer, and plaintiffs appealed. The Supreme Court agreed that an advance is required when liability is reasonably clear, but in this case, there was a conflict in the evidence as to whether the driver or the child was negligent. Because genuine issues of material fact existed regarding negligence and liability, summary judgment on the question of the advance was not required. The District Court was affirmed. Giambra v. Travelers Indem. Co., 2003 MT 289, 318 M 73, 78 P3d 880 (2003), following Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997). See also Teeter v. Mid-Century Ins. Co., 2017 MT 292, 389 Mont. 407, 406 P.3d 464.

Failure by Insurer to Present Facts to Controvert Testimony That Ongoing Medical Expenses Causally Related to Accident — Declaratory Judgment Proper: In Renville v. Taylor, 2000 MT 217, 301 M 99, 7 P3d 400 (2000), the Supreme Court held that defendant insurer was liable for all expenses related to a collision involving Renville and remanded for a new trial on the issue of damages. Renville then asked the District Court for a declaratory judgment ordering defendant to pay for ongoing medical expenses incurred by Renville subsequent to trial. The District Court denied the request on grounds that factual issues existed regarding Renville's ongoing medical expenses that required resolution by a jury. Renville appealed, asserting that the court failed to follow the law of the case, and the Supreme Court agreed and reversed. Although an insurer is entitled to dispute its obligation to pay medical expenses, there must be a factual basis for doing so. Here, defendant insurer refused to pay Renville's ongoing medical expenses because the expenses were allegedly not causally related to the collision; however, the insurer failed to present any evidence to controvert Renville's expert testimony on causation, choosing instead to rely on testimony from the first trial that had been disregarded by the jury and that was not relevant to the issue of ongoing medical expenses. Thus, the District Court erred in failing to grant Renville's motion for declaratory judgment, and defendant insurer was required to pay Renville's ongoing medical expenses pursuant to Ridley v. Guarantee Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997), and the law of the case. Renville v. Farmers Ins. Exch., 2003 MT 103, 315 M 295, 69 P3d 217 (2003), followed in Hoffman v. Austin, 2006 MT 289, 334 M 357, 147 P3d 177 (2006).

Failure of Proof of Unfair Trade Practices — Action of Insurer in Determining Proof of Loss: Plaintiffs alleged that their insurer refused to pay for hail damage to their home and sought money damages for mental anguish and emotional distress, punitive damages, costs, and attorney fees. The underlying cause was dismissed with prejudice after the insurer made the payment, so the only remaining claims were for loss of the use of money and the derivative claim seeking punitive damages. The District Court found in favor of the insurer, concluding that there was a failure of proof for the claims under subsections (4) and (6) of this section, and plaintiffs appealed. The Supreme Court affirmed. Under 33-18-242, an insurer may not be held liable if the insurer has a reasonable basis in law or in fact for contesting a claim or the amount of a claim. In this case, it was reasonable for the insurer to immediately seek bids for the replacement costs and to seek current bids from contractors following plaintiffs' rejection of a joint appraisal. The insurer's actions were reasonable, and little if any of the delay could be attributed to the insurer. In the absence of evidence from plaintiffs to the contrary, the alleged unfair trade practice was unproved. Nelson v. Farmers Union Mut. Ins. Co., 2003 MT 101, 315 M 268, 68 P3d 689 (2003).

Material Misrepresentation on Application for Credit Life and Disability Insurance — Denial of Coverage Warranted: Schlemmer applied to the North Central Life Insurance Company (North Central) for credit life and disability insurance but misrepresented his health history. If he had answered correctly on the application, he would have been ineligible for the insurance. Nevertheless, he averred by his signature that he understood the form and that his application statements were true, so the policy was issued. Schlemmer later filed a claim for disability payments. North Central investigated, found that Schlemmer had been treated within the previous 2 years for hypertension, chronic obstructive lung disease, and disease or disorder of the kidneys, contrary to his statements in the application, and denied the claim and refunded Schlemmer's premiums. Schlemmer sued for damages, claiming that the application and underwriting procedures used by North Central violated this section, commonly known as the unfair claims settlement practices law, breached the covenant of good faith and fair dealing, and constituted fraud. Schlemmer also maintained that the District Court erred in failing to rule on whether North Central's agent had knowledge of Schlemmer's condition, which might have created a question of material fact. The Supreme Court affirmed the District Court's rulings that: (1) Schlemmer's claim of ignorance of the contents of the written application could not prevail because the application language was clear and unambiguous and Schlemmer did not deny signing it; (2) Schlemmer materially misrepresented his health on the application; (3) the material misrepresentation was legally sufficient to allow North Central to deny coverage under the policy; and (4) Schlemmer's argument that North Central's agent knew or should have known about Schlemmer's health was mere speculation insufficient to create an issue of fact to defeat North Central's properly supported motion for summary judgment. Further, the Supreme Court declined to consider Schlemmer's argument that the misrepresentation could not serve as a basis to rescind the policy because he did not apply for benefits until more than 2 years after applying for the insurance, pursuant to 33-22-205, because Schlemmer never raised the issue at the District Court level. Schlemmer v. N. Cent. Life Ins. Co., 2001 MT 256, 307 M 203, 37 P3d 63 (2001).

Incorrect Dismissal of Declaratory Judgment Seeking Payment of Prejudgment Medical Expenses — Ridley and Safeco Clarified: DuBray filed a complaint for a declaratory judgment, asking for a determination that Farmers Insurance Exchange (Farmers) was required to pay DuBray's medical expenses prior to settlement of or judgment on the underlying claim. DuBray also sought prejudgment interest, costs of suit, and compensatory and punitive damages. The District Court found that the complaint was effectively a bad faith action barred by 33-18-242 prior to resolution of the underlying claim against Farmers and dismissed the claim in its entirety for failure to state a claim upon which relief could be granted. DuBray appealed, citing Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834 (2000), wherein the Supreme Court approved declaratory judgment actions as a means for compelling advance payment of medical expenses. Farmers contended that Safeco authorized declaratory judgment actions only for damages that, according to Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997), are owed prior to final judgment, that the only damages to which Ridley applied are undisputed medical expenses, and that the District Court should therefore be affirmed. The Supreme Court affirmed Safeco inasmuch as that case does not authorize a declaratory judgment to determine an insurer's liability prior to resolution of the underlying claim, with the exception of damages for which liability is reasonably clear, which are not barred by 33-18-242. Therefore, the District Court correctly dismissed DuBray's claims for pain and discomfort, mental distress, inconvenience, and punitive damages. However, Farmers' liability for medical damages was reasonably clear, so the District Court committed reversible error in dismissing the portion of DuBray's claim that sought payment of medical expenses. The Supreme Court went on to clarify Safeco and Ridley to ensure that those cases not be construed to apply only to medical expenses, because medical expenses are just one of the obligations incurred by victims that mandatory liability insurance laws were designed to eliminate, another being lost wages that are reasonably certain and directly related to an insured's negligence or wrongful act. DuBray v. Farmers Ins. Exch., 2001 MT 251, 307 M 134, 36 P3d 897 (2001).

No Duty to Defend or Settle — Res Judicata and Collateral Estoppel: In October 1993, Engstrand had almost all of his fingers amputated while working on a team that was splitting firewood for Little Joe's Tavern, a bar owned by Troutt and her husband. Seven weeks after the occurrence of the accident, Colorado Western Insurance Company (CWIC), the insurance company that issued Troutt's liquor liability insurance, was notified of the accident. CWIC then hired an independent adjuster to investigate the accident. During the investigation, Peggy and Lee Troutt and their attorney stated that only one beer had been consumed by the wood-splitting team before the accident. The investigator was not notified of Lee Troutt's statement that did not attribute the accident to alcohol at that time even though Troutt's attorney possessed a copy of the statement in his file. Engstrand and his wife filed a personal injury suit against Troutt in state court in June 1995. In their complaint, the Engstrands did not mention alcohol at all. However, Little Joe's Tavern bartender the night before the accident stated during her deposition that both Lee Troutt and another member of the team were visibly intoxicated when they left the bar at 2 a.m. the day of the accident. Lee Troutt admitted that it was possible that he had a hangover the day of the accident. Several members of the team were deposed, and they confirmed that a pitcher of beer was consumed during a break in the work at noon, approximately 45 minutes before the accident occurred. At trial, Troutt admitted liability, and the case proceeded to a hearing on damages, in which Troutt did not participate, that resulted in the Montana state court awarding the Engstrands $1,154,262.29. Following the state court judgment, Troutt sued CWIC in federal court seeking a declaration that CWIC's liquor liability policy provided coverage for the judgment obtained by the Engstrands. The Engstrands sued CWIC for the same reason in state court. CWIC removed this second case to federal court, and the two cases were consolidated into a single case. Troutt also alleged that CWIC was guilty of breach of contract and bad faith violations of the Montana Unfair Trade Practices and Consumer Protection Act of 1973 for failing to investigate fully the Engstrands' claim and failing to provide a defense and indemnification to her. She also sought punitive damages. The District Court also ruled that the liquor insurance policy was not ambiguous, but the policy was broader than the Montana dram shop law, and therefore, after conducting a bench trial and looking at new evidence presented by Troutt, it ruled that the policy covered the amounts that Troutt was obligated to pay as a result of Engstrand's accident. On all other issues, the District Court held in favor of CWIC. Both parties appeal those issues on which they lost before the District Court. Res judicata and collateral estoppel are two different doctrines that are often confused for each other. The Montana Supreme Court has succinctly explained the difference between the two: "The doctrines differ in that res judicata bars the same parties from relitigating the same cause of action, while collateral estoppel bars the party against whom the claim is asserted, or a party in privity with the earlier party, from relitigating issues which have been decided with respect to a different cause of action." Federated Mut. Ins. Co. v. Anderson, 991 P2d 915 (Mont. 1999). In this case, res judicata is inapplicable because the doctrine has only a preclusive effect on the parties involved in the state court suit, i.e., the Engstrands and Troutt. Thus, res judicata prevents the Engstrands from bringing another personal injury cause of action based on Terry Engstrand's accident against Troutt. CWIC cannot assert the doctrine of res judicata because it was not a party to the original suit. Similarly, res judicata is inapplicable because the causes of action of the two lawsuits are markedly different: the state court action was a personal injury tort suit; the federal court action is a declaratory relief suit based on an allegedly breached insurance contract. The first two elements of the res judicata test are not present here. Collateral estoppel, also known as issue preclusion, bars the reopening of an issue in a different cause of action that has been litigated and determined in a prior suit. See Holtman v. 4-G's Plumbing & Heating, Inc., 872 P2d 318 (Mont. 1994). The preclusive effect extends to all issues essential to the prior judgment. The alcohol issue was not raised by the parties in their pleadings, nor was it developed at trial or through motion practice. Rather, the state court's findings seem to be based primarily on Troutt's admission of liability. Such admission precludes a determination that the issue was actually litigated on its merits. The result of the collateral estoppel inquiry is that the totality of the circumstances suggest that the issue regarding the alcohol consumption was litigated but was not decided on the merits in the state court proceeding. Therefore, collateral estoppel is not a bar to the litigation of the alcohol consumption question in this case. The state court found Troutt liable to the Engstrands under a set of facts that included alcohol as a causing factor of the accident. The policy issued by CWIC contemplates coverage under this exact set of circumstances and does not bind such coverage to the Montana dram shop law. If CWIC had intended to incorporate the law as the sole arbiter of Troutt's liability, it could have simply inserted a clause to that effect in its policy. Therefore, the plain meaning of CWIC's policy is that all liability, whether based on the law or not, is covered, and because the state court found liability, coverage exists. It is true that the Montana Supreme Court ruled that the insuring language in CWIC's policy was inherently ambiguous; this ruling arrived a few years following the contract made between Troutt and CWIC. Thus, even though the construction stated by the Montana Supreme Court applies to the policy, it would be singular to impose tort liability on CWIC for failing to anticipate the Montana Supreme Court rulings, especially given the fact that the Montana Supreme Court specifically accepted CWIC's construction of the ambiguous language as one of the possible ways that this language can be interpreted. It is irrelevant that CWIC was wrong in its determination that no coverage existed under the policy because at the time that the offer to settle was made, it reasonably concluded that no coverage was possible. Under these circumstances, CWIC did not have a duty to defend Troutt from the Engstrands' suit against her and did not breach its agreement with Troutt by failing to investigate the claim or to settle before trial. Troutt v. Colo. W. Ins. Co. 246 F3d 1150 (2001).

Insurer's Reasonable Explanation for Denial of Claim for Advance Medical Payments and Living Expenses — Injunction and Declaratory Judgment Properly Denied: Ensey was injured in a fall from a ladder while working at a construction site for a drywall company. Following Ensey's request that the company notify its insurer of the claim, the insurer, Colorado Casualty, notified Ensey that it was investigating. About 3 months after the accident, Ensey sent the insurer a demand letter requesting advance medical expenses payments and lost earnings payments, contending that the insurer's liability was reasonably clear because the company had failed to provide Ensey with safe scaffolding equipment. About 2 months later, Ensey was informed by counsel for the insurer that the request for advance payments was denied because liability was not reasonably clear. The insurer's investigation had revealed that there were in fact multiple safety devices available for Ensey's use, but that Ensey personally chose the ladder over the other equipment. About 2 weeks later, Ensey filed a complaint against Colorado Casualty, seeking a declaratory judgment establishing entitlement to the advance payments, an injunction compelling Colorado Casualty to make the payments, and damages. The District Court found that Colorado Casualty had provided a reasonable explanation for denying Ensey's claim and dismissed the suit. Ensey appealed, but the Supreme Court affirmed. Colorado Casualty complied with its duty to provide Ensey with a reasonable explanation for the denial of the claim. The explanation provided a legal and factual basis for the denial and was reasonably prompt. Nothing more was required. Denial of Ensey's request for a preliminary injunction and declaratory judgment was proper. Ensey v. Colo. Cas., 2001 MT 152, 306 M 68, 30 P3d 350 (2001).

Expert Testimony Not Needed on Insurance Agent's Standard of Care in Procuring Requested Insurance: In an insureds' negligence and contract action against an insurance agency for failure to procure requested coverage, an insurance agent testified as to the duties and responsibilities of an insurance agent when asked to procure specific insurance. Expert testimony on the insurance agent's standard of care and breach of the standard was not required. Fillinger v. NW. Agency, Inc., of Great Falls, 283 M 71, 938 P2d 1347, 54 St. Rep. 500 (1997).

Insurance Agent's Failure to Procure Requested Coverage — Duty of Insured to Read Policy and Confirm Requested Coverage: The jury reasonably found that it was not unreasonable for husband and wife to have not read the insurance policy covering their outfitting business and that it was reasonable for them to act in reliance upon the representations of their insurance agent. The insureds did not have an absolute duty to read the policy. Failure to read a policy might amount to contributory negligence, but that is a question for the jury. The husband testified that he asked the agent for a policy that would cover everything, especially if someone were hurt on a horse, and that he was told that it would. He asked the same question for a number of years each time that the policy was renewed and was always given an affirmative answer. The agent testified that the husband frequently asked about and was concerned about "horse rider" coverage. When an accident occurred involving a horse, the agent told the husband that the bills would be paid. However, the insurance company failed to pay the bills, and the insured sued the agent for negligence and breach of contract. Fillinger v. NW. Agency, Inc., of Great Falls, 283 M 71, 938 P2d 1347, 54 St. Rep. 500 (1997).

Insurance Agents Subject to This Law in Procuring Insurance for Insureds: The relationship between insureds and an insurance agency in regard to insurance that the agency procures for insureds clearly involves the business of insurance, and misrepresentations of coverage by an insurance agent of the agency are prohibited trade practices. Fillinger v. NW. Agency, Inc., of Great Falls, 283 M 71, 938 P2d 1347, 54 St. Rep. 500 (1997).

Attorney Letter Constitutes "Claim": When a maintenance worker was injured in a fall from a hospital roof, his attorney in a letter to the hospital's architectural designer requested that the firm have its insurance carrier contact the attorney regarding the worker's "claim". The worker argued that the applicable policy limits were $1 million rather than the $100,000 limit in effect when the attorney's letter was received. Affirming the District Court's decision, the Supreme Court ruled that the attorney letter, written when the policy limits in effect were $100,000, constituted a "claim" for damages under the policy. Herron v. Schutz Foss Architects, 282 M 94, 935 P2d 1104, 54 St. Rep. 258 (1997).

Certified Questions — Settlement or Judgment Not Required as Precondition to Action Against Insurer — Unfair Claims Settlement Practices Action Not Barred by Terms of Policy: In an original proceeding pursuant to former Rule 44, M.R.App.P. (now superseded), the Supreme Court responded to two certified questions from the Ninth Circuit Court of Appeals and held that an insured need not pursue the underlying claim to the point of settlement or judgment before bringing an action against the insurer under the unfair claims settlement practices statutes codified in Title 33, ch. 18. This was true, notwithstanding a "no action" clause in the insurance policy, because the clause was contrary to public policy. The Supreme Court also held that the insured was not barred by the "no action" clause of the policy from bringing an action under the unfair claims settlement practices statutes when the company did not object to direct settlement between the plaintiff and insured in the underlying action and when the insurer contributed the policy limits to that settlement. Peris v. Safeco Ins. Co., 276 M 486, 916 P2d 780, 53 St. Rep. 481 (1996).

Reversal of Jury Findings Regarding Liability Not Allowed Upon Court Review of Punitive Damage Award: A jury, by special verdict, found that defendants had no reasonable basis in law or fact for contesting plaintiffs' claim for crop damages and awarded plaintiffs punitive damages. Upon review of the damage award, the District Court concluded that defendants had a reasonable basis upon which to deny the claim and modified the damage award. On appeal, the Supreme Court held that because plaintiffs invoked their right to a jury trial, allowing the court to reverse issues of underlying liability previously submitted to and decided by the jury would interfere with the jury as trier of fact deciding the issues. Court review pursuant to 27-1-221(7)(c) must be conducted without contradicting findings of fact made by the jury, and failure to do so constitutes reversible error. Debruycker v. Guar. Nat'l Ins. Co., 266 M 294, 880 P2d 819, 51 St. Rep. 835 (1994).

Coverage Properly Denied for Insured Who Claimed He Punched Another Person While Unconscious: Smith punched his babysitter in the face but claimed that she had hit him on the head first and that he was unconscious when he struck her. He pleaded guilty to a misdemeanor assault charge and was ordered to pay medical expenses, which he failed to do. The babysitter sued Smith, and he in turn sued his insurance company, which denied coverage on the basis that the policy denied coverage for injuries caused by intentional acts. The Supreme Court held that despite Smith's claim that he was unconscious from a blow to the head when he struck the babysitter, the conduct of striking her with his fist, by its nature, evinced an intent to injure and coverage was properly denied. Smith v. St. Farm Ins. Co., 264 M 129, 870 P2d 74, 51 St. Rep. 186 (1994).

Defense to Charge of Unfair Claim Settlement — Reasonable Basis for Denial of Claim to Be Determined by Trier of Fact: Shortly after the Deans' house was destroyed by fire, they were charged with arson. Their insurance company refused to settle their claim because of the pending arson charges. After the Deans were acquitted of the criminal charges, the insurance company paid them the policy limits. Later, the Deans filed an action in United States District Court alleging a number of violations of this section. The United States District Court certified a question to the Montana Supreme Court, asking whether the insurance company's refusal to pay the claim while the arson charges were pending constituted a "reasonable basis in law or fact", under 33-18-242, as a defense to the action. Citing Dees v. Am. Nat'l Fire Ins. Co., 260 M 431, 861 P2d 141, 50 St. Rep. 1068 (1993), the Supreme Court held that reasonableness was a question of fact for the trier of fact to decide. Dean v. Austin Mut. Ins. Co., 263 M 386, 869 P2d 256, 51 St. Rep 102 (1994), followed in Debruycker v. Guar. Nat'l Ins. Co., 266 M 294, 880 P2d 819, 51 St. Rep. 835 (1994).

Individuals as Well as Insurers Liable for Unfair Trade Practices: The defendant in a personal injury case filed a counterclaim against the plaintiffs, alleging that their negligence was the cause of the automobile accident involving the parties. Subsequently, in his deposition, the defendant admitted that he had been intoxicated at the time of the accident, that he had been driving negligently, and that the plaintiffs had not been negligent. The plaintiffs sought summary judgment to dismiss the defendant's counterclaims, but prior to the hearing, the defendant voluntarily dismissed his counterclaims. The plaintiffs then sought damages from the insurer and the agent for bad faith in violation of the insurer's statutory duty to settle a claim when liability becomes reasonably clear. The agent argued that 33-18-242 limits liability for unfair trade practices to insurers. The Supreme Court held that that portion of Klaudt v. Flink, 202 M 247, 658 P2d 1065 (1983), holding that this section did afford a plaintiff a common-law cause of action against individuals, had never been reversed or modified. The Supreme Court further held that the statutory cause of action provided for in 33-18-242 and the different standard of proof provided for by the statute apply only to insurers, while the common-law cause of action and standard of proof provided for by this section apply to insurers and individuals. O'Fallon v. Farmers Ins. Exch., 260 M 233, 859 P2d 1008, 50 St. Rep. 1022 (1993), followed in Debruycker v. Guar. Nat'l Ins. Co., 266 M 294, 880 P2d 819, 51 St. Rep. 835 (1994), in which the Supreme Court acknowledged the different standards of proof for claims against individuals and insurers, but nevertheless reversed a lower court decision striking a jury punitive damage award against an individual when the common-law standing of the party was not raised as an issue prior to appeal.

Excess Insurer's Action Against Primary Insurer Based Upon Subrogation and Not Independent Right — Dismissal of Other Action — No Subrogation: St. Paul's insured, Lynn, and Allstate's insured, Glassing, were involved in a car accident. After judgment against Glassing, St. Paul paid Lynn pursuant to the underinsured motorist provision of its policy and then sought recovery itself against Allstate based on a right of equitable subrogation and Allstate's failure to settle Lynn's claim. The Supreme Court held that St. Paul could not act as a third-party claimant and bring an action directly against Allstate based upon subrogation and Allstate's failure as a primary insurer to pay its policy limits to Lynn. The Supreme Court noted that there is no independent duty of Allstate to pay the policy amount to St. Paul, that duty depends only upon subrogation of the rights of Lynn, and that at the time of the action, Lynn had no right against

Allstate because of a stipulation dismissing an action in federal District Court against Allstate. St. Paul Fire & Marine Ins. Co. v. Allstate Ins. Co., 257 M 47, 847 P2d 705, 50 St. Rep. 154 (1993), followed in Nimmick v. St. Farm Mut. Auto. Ins. Co., 270 M 315, 891 P2d 1154, 52 St. Rep. 208 (1995).

No Claim Submitted — Act Inapplicable: This section does not apply to a case in which a claim is never submitted to an insurer. McNeil v. Currie, 253 M 9, 830 P2d 1241, 49 St. Rep. 312 (1992).

Contract Payments Made — Summary Judgment Proper: Kasetas asserted unfair claims settlement practices, but summary judgment on the issue was not error given Kasetas' admission that proper payments were made under the terms of the contract. Kaseta v. NW. Agency of Great Falls, 252 M 135, 827 P2d 804, 49 St. Rep. 183 (1992).

Summary Judgment Held Improper on Issue of Bad Faith: In an earlier action between the parties, the Supreme Court had reversed the lower court and ruled that the plaintiff had made a claim against the insurance company in a timely fashion. In a second trial on the issue of bad faith, the lower court granted the insurance company's summary judgment motion on the basis that if a previous court had ruled that there was no coverage, although reversed on appeal, then as a matter of law there were good faith arguments supporting the insurance company's denial. The lower court reasoned that if one judge could find in favor of no coverage, then the defendant had demonstrated that it had denied coverage in good faith and summary judgment was proper. The Supreme Court reversed the lower court, holding that questions of fact did exist with respect to alleged lack of good faith on the part of the defendant, regardless of any earlier rulings. Walker v. St. Paul Fire & Marine Ins. Co., 241 M 256, 786 P2d 1157, 47 St. Rep. 208 (1990).

Correspondence Between Insurer and Attorneys Privileged: Correspondence between an insurer and its attorneys relating to litigation that occurred after litigation was begun is privileged from disclosure in a bad faith claim filed by the insured against the insurer after resolution of the underlying insurance claim. Unless there is a conflict of interest, the attorneys hired by the insurer to defend its insured also represent the insurer, and therefore communications between the attorneys and insurer are protected by the common-law attorney-client privilege that has been codified in 26-1-803. Adopting the reasoning of a recent federal case, Admiral Ins. v. U.S. District Court, 881 F2d 1486 (9th Cir. 1989), which enumerated the essential elements of the privilege, the Supreme Court held that although a showing of need may overcome the immunity given to an attorney work product, a similar showing cannot be invoked to overcome the attorney-client privilege. State ex rel. USF&G Co. v. District Court, 240 M 5, 783 P2d 911, 46 St. Rep. 1896 (1989), followed in Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993).

Bad Faith Litigation — Attorney-Client Privilege: In interpreting Montana state law to determine the scope of protection afforded by the attorney-client privilege in an action for bad faith by an insured against an insurer, the District Court found that letters written to the insurer by the insurer's attorney concerning the underlying insurance claim are protected by the attorney-client privilege and work product doctrine codified in this state under 26-1-803. The court rejected plaintiff's contention that the documents were not protected by the privilege because the attorney represented only the insured, not the insurer, in the underlying claim and therefore his communications with the insurer were not communications between an attorney and his client. The attorney was acting in a dual capacity as attorney for both the insurer and insured, which is recognized as proper as long as a conflict of interest does not arise. The court further determined that documents clearly prepared in the ordinary course of the insurer's business, and not for the purpose of this litigation, are discoverable because they are not protected by the work product doctrine. Baker v. CNA Ins. Co., 45 St. Rep. 2400 (D.C. Mont. 1988) (apparently not reported in Federal Supplement).

Discovery of "Bad Faith" Litigation in Other Jurisdictions: In a federal action for bad faith by an insured against an insurer based upon diversity jurisdiction, the District Court held that information concerning similar "bad faith" litigation against the insurer in other jurisdictions is discoverable if the discovering party establishes to the court's satisfaction that the obligations imposed on the insurer by the other jurisdiction are sufficiently similar to Montana law to warrant a conclusion that the information could reasonably be expected to lead to the discovery of admissible evidence. Baker v. CNA Ins. Co., 45 St. Rep. 2400 (D.C. Mont. 1988) (apparently not reported in Federal Supplement).

Duty to Investigate — No Duty to Defend Absent Applicable Coverage: Insurers have the duty to investigate claims and coverage promptly, and not only covered claims. However, when the allegations of a complaint demonstrate that no coverage exists, an insurer has no duty to indemnify or defend. Daly Ditches Irrigation District v. Nat'l Sur. Corp., 234 M 537, 764 P2d 1276, 45 St. Rep. 2112 (1988), citing McClear v. St. Paul Ins. Co., 158 M 452, 493 P2d 331 (1972).

McClear was followed in Brabeck v. Employers Mut. Cas. Co., 2000 MT 373, 303 M 468, 16 P3d 355, 57 St. Rep. 1596 (2000).

Award of Attorney Fees in Declaratory Judgment Insurance Action — Distinction Between Third-Party Claimant and Insured: As a general rule, an insured is not entitled to recover attorney fees and expenses incurred in defending a declaratory judgment action brought by an insurer to determine the existence of coverage under a liability insurance policy. However, recovery is appropriate where it is ultimately determined by the court that the insurer was not acting in good faith in contesting coverage and instituting declaratory judgment proceedings. A third-party claimant is not entitled to recover attorney fees incurred in a declaratory judgment proceeding, even if the claimant arguably falls within the policy definition of "insured". Iowa Mut. Ins. Co. v. Davis, 689 F. Supp. 1028, 45 St. Rep. 1361 (D.C. Mont. 1988).

Applicability to Licensed Insurance Business That Issues Suretyship Contract: A business entity licensed under Montana law to transact the business of insurance, which issues as part of its business a contract of suretyship guaranteeing the performance of an underlying contract in Montana, is transacting a class of insurance business under Montana law and is subject to statutes regarding unfair claims settlement practices as set out in Title 33, ch. 18, part 2. The entity is liable in a tort action for violations of 33-18-201 for damages beyond the express terms of the suretyship contract. K-W Indus. v. Nat'l Surety Corp., 231 M 461, 754 P2d 502, 45 St. Rep. 762 (1988).

Valid Release of Insurance Claims as Binding: Plaintiff injured in an automobile accident received $4,362.85 for medical expenses, lost wages, car rental costs, headaches, and inconvenience. In return for the settlement payments, the adjuster obtained a general liability release discharging the insurance company "from all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever ... [for] all injuries, known or unknown". Plaintiff sent a thank you note to the adjuster to express her pleasure with the "settlement and prompt service" but also retained an attorney on the case who attempted to obtain rescission of the release after receiving a copy of plaintiff's medical report. Rescission was denied upon a finding that plaintiff executed a valid release of all claims and that the terms of the agreement and release were clear and unambiguous. Plaintiff was bound by the settlement terms. Hanson v. Oljar, 231 M 272, 752 P2d 187, 45 St. Rep. 602 (1988).

No Cause of Action by Third Party Claimants for Unfair Claims Settlement Practices: Subsection (7) of 33-18-201, disallowing compulsion of insureds to institute litigation, does not protect third party claimants who are not insured by the defendant insurance company. Hart-Anderson v. Hauck, 230 M 63, 748 P2d 937, 45 St. Rep. 18 (1988), distinguishing Klaudt v. Flink, 202 M 247, 658 P2d 1065, 40 St. Rep. 64 (1983).

FELA, Not State Statutory Law, as Providing Remedy for Common Law Claims: Claimant sought compensation from a Federal Employers' Liability Act (FELA) self-insurer for an alleged breach of the common law duty of good faith and fair dealing. Claimant argued that because FELA did not specifically address the problem of unfair claims settlement practices, the duties imposed by Montana statutory and common law were not preempted by FELA and should apply. The federal District Court found no authority for this novel proposition in holding that the rights and duties of an employee and employer subject to FELA depend on the terms of the Act itself and on common law as interpreted by the federal courts; therefore, FELA presents the exclusive remedy in all actions falling within the ambit of the Act to the exclusion of state statutory and common law. Toscano v. Burlington N. RR Co., 678 F. Supp. 1477, 45 St. Rep. 367 (D.C. Mont. 1987).

Litigation Provision Inapplicable to Third-Party Claimants: Subsection (7) of this section, which relates to compelling insureds to institute litigation by offering less than amounts ultimately recovered, does not apply to or protect third-party claimants. Hart-Anderson v. Hauck, 44 St. Rep. 508 (1987), opinion withdrawn and replaced in 230 M 63, 748 P2d 937, 45 St. Rep. 18 (1988).

Reliance on Insurance Coverage — Elements of Promissory Estoppel Met: Where an insurance company treated son as an insured when it paid prior medical bills and when it represented to a medical center that he was insured, these acts constituted a promise to pay medical bills. Father and son were injured by their reliance on the promise when the company later refused coverage of medical center bills. As reliance was reasonable and foreseeable, these facts constituted ample evidence for a jury finding of promissory estoppel. Tynes v. Bankers Life Co., 224 M 350, 730 P2d 1115, 43 St. Rep. 2243 (1986).

Violation of Unfair Claims Settlement Practices — Three-Year Statute of Limitations: A claim for violation of the unfair claims settlement practices statute arises out of a statutory scheme but consists of a separate cause of action in tort. Therefore, the 3-year Statute of Limitations applies. Tynes v. Bankers Life Co., 224 M 350, 730 P2d 1115, 43 St. Rep. 2243 (1986).

Improper Denial of Malpractice Insurance — Claim Filed Within Policy Period: The Internal Revenue Service (I.R.S.) notified Walker that attorney Larson had underestimated the amount of estate tax owed by the estate. Larson's insurance company denied coverage, stating that Larson had failed to extend coverage to include claims reported after the policy expiration date. Walker filed malpractice, bad faith, and unfair trade practice claims against Larson. The District Court denied both Larson's and the insurance company's motions to dismiss and subsequently granted judgment in favor of the company. On appeal, the Supreme Court reversed, stating that under the authority of Link v. Cont. Cas. Co., 470 F2d 1133 (9th Cir. 1972), the ambiguity surrounding the term "claim" would be construed against the insurer. Walker had filed her claim against Larson within the policy period. Walker v. Larson, 223 M 333, 727 P2d 1321, 43 St. Rep. 1765 (1986).

Bad Faith Claim Suspended Until Liability Determined: Plaintiff sued defendant, insurer of another driver, following a three-car accident. Defendant denied any liability on the part of its insured and refused to pay any part of plaintiff's claim. Plaintiff then filed a bad faith action against defendant. The District Court granted summary judgment. The Supreme Court reversed and remanded the case. The court overruled Klaudt v. Flink, 202 M 247, 658 P2d 1065, 40 St. Rep. 64 (1983), to the extent that Klaudt allowed a bad faith claim to be pursued although liability for an accident had not been determined. The court noted several problems in this procedure and held that all proceedings in a bad faith case alleging violations of the insurance laws which require a showing that liability be reasonably clear are suspended until the liability issues of the underlying case are determined by judgment or settlement. The bad faith case may be filed to toll the Statute of Limitations, but no discovery may be engaged. A favorable District Court judgment for the plaintiff is sufficient to trigger discovery in the bad faith case. Fode v. Farmers Ins. Exch., 221 M 282, 719 P2d 414, 43 St. Rep. 814 (1986), followed in In re Petition of Johnson, 224 M 337, 728 P2d 1354, 43 St. Rep. 2232 (1986), and distinguished in Peris v. Safeco Ins. Co., 276 M 486, 916 P2d 780, 53 St. Rep. 481 (1996).

No Reference to Unfair Claim Settlement Practices Statute — Remand — Suspension of Proceedings Pending Determination of Liability: Appellant Fode asked the Supreme Court to recognize the common-law duty of good faith and fair dealing imposed by 28-1-201 and 28-1-203 without reference to 33-18-201, the unfair claim settlement practices statute. In remanding the case, the court found that Fode's allegations contained in his complaint should be presented to the District Court to determine whether a cause of action existed under 33-18-201; however, all proceedings were suspended until liability was determined in the underlying case. Fode v. Farmers Ins. Exch., 221 M 282, 719 P2d 414, 43 St. Rep. 814 (1986).

Venue for Insurer Bad Faith Tort — County Where Investigation and Negotiation Transpired: In action for bad faith against insurer and its claims representative under 33-18-201, defendants moved for change of venue from Flathead County to Cascade County. Defendants contended that Cascade County was proper venue since the claims representative maintained an office and accomplished all work and decisions there. The Supreme Court affirmed the trial court's denial of the motion, finding that the defendant's duty to investigate and negotiate could have been realistically performed only in Flathead County where the plaintiff's farm and the provider of defective potting soil were located. Since venue in Flathead County was proper for the insurer, it was also proper for the claims representative who resided in Cascade County. Streich & Associates, Inc. v. St. Paul Mercury Ins. Co., 221 M 209, 717 P2d 1101, 43 St. Rep. 752 (1986).

Breach of Covenant of Good Faith in Conducting Insurance Claim: In a foreclosure action, the insured, Britton, cross-claimed against Farmers Insurance Group (FIG) for the full amount of coverage provided by FIG's policy and for further compensatory and punitive damages by reason of "bad faith". FIG responded to the foreclosure action by setting up as a cross-claim against Britton its right under its partial assignment of mortgage and requesting foreclosure against Britton. FIG further defended against Britton's cross-claim by alleging that Britton had intentionally set the fire, had been guilty of fraud with respect to his interest in the property, and had not submitted a proper proof of loss. On appeal, the Supreme Court found that prior to filing its answer to Britton's cross-claim, FIG neither rejected Britton's proof of loss nor informed him in writing or otherwise of their contention of arson. Also, FIG's evidence regarding Britton's involvement in setting the fire was circumstantial, and there was no evidence of potential financial gain for Britton from the policy proceeds. The jury decision that FIG breached the implied covenant of good faith and fair dealing in conducting the claim was upheld. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

Verbatim Reading of Unfair Claim Settlement Practices as Jury Instruction — Harmless Error: An insurer claimed the District Court erred in including in its charge to the jury a verbatim reproduction of the 14 proscribed unfair claim settlement practices contained in 33-18-201, contending that a majority of the practices had no applicability to this case. On appeal, the Supreme Court found there was at least an arguable basis for submission to the jury of 12 of the 14 practices enumerated, and that inclusion of the two inapplicable practices in the jury instruction was harmless and not prejudicial. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

Concealment of Material Facts — Bad Faith: In an action against his insurance company for failure to settle a third-party claim within policy limits, plaintiff offered and the trial court gave an instruction stating that an insurer is liable for bad faith if it intentionally conceals material facts within its knowledge and not known by the insured. Defendant contended it was error to give the instruction. On appeal, the Supreme Court stated that the duty of a fiduciary to his beneficiary is no less than that of a trustee. The fiduciary, as a trustee, is bound to act in the highest good faith toward his beneficiary and may not obtain any advantage over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind. It was therefore not error to inform the jury that an insurance company which "intentionally" conceals material facts within its knowledge and not known to the insured may be found to be acting in bad faith. The concealed facts must be material to the subject of the trust or duty of the fiduciary as the instruction stated. The judgment was affirmed. Gibson v. W. Fire Ins. Co., 210 M 267, 682 P2d 725, 41 St. Rep. 1048 (1984).

Declaratory Judgment — May Preclude Charge of Bad Faith: Kevin Cumiskey leased a restaurant from Elizabeth Bradley. The lease provided Cumiskey could make improvements to the premises, but he was to insure Bradley's interests. Cumiskey's father and mother operated the restaurant after it was incorporated. The restaurant was damaged by fire that appeared to be intentionally set. Plaintiff brought suit for a declaratory judgment to determine if Kevin Cumiskey was the recipient of policy proceeds, to determine rights and relationships of parties, and to subrogate any claim paid by plaintiff from the father who was suspected of the arson. Cumiskey counterclaimed for bad faith on the insurer's part. The District Court granted the insurer summary judgment. The Supreme Court held that a declaratory judgment action may be brought for the purpose of settling and affording relief from uncertainty and insecurity with respect to rights, status, and other legal relations. In a proper case, an insurer may use a declaratory judgment to obtain a determination of the validity, continuance, or coverage of an insurance policy; a determination of the extent of liability; or a determination of the insurer's duties under the policy. The action was proper, and the summary judgment on the counterclaim was properly awarded. St. Paul Fire & Marine Ins. Co. v. Cumiskey, 204 M 350, 665 P2d 223, 40 St. Rep. 891 (1983).

Insurers' Duty to Act in Good Faith Toward Insured: Insurance companies have a duty, independent of contract and statutes, to act in good faith with their insureds. Any statements in Montana Supreme Court cases that may be or appear to be in conflict with this rule are to that extent expressly overruled. Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982), followed in Stephens v. Safeco Ins. Co. of America, 258 M 142, 852 P2d 565, 50 St. Rep. 467 (1993).

DUTY TO DEFEND

Payment of Policy Limits to Injured Party Without Release for Insured — Insurer Not in Breach of Duty to Insured: On a question certified from the federal District Court, the Supreme Court held that in the wake of a motor vehicle accident, when the liability for the accident is reasonably clear and it is reasonably clear that the total damages caused by the insured party exceed the insurance policy limits, the insurer is not in breach of a duty to the insured by paying the injured party the policy limits without obtaining a release for its insured. High Country Paving, Inc. v. United Fire & Cas. Co., 2019 MT 297, 398 Mont. 191, 454 P.3d 1210.

Policy Limiting Coverage to Accidents May Include Intentional Acts — Summary Judgment Improper — Remanded to Determine Whether Damages Were Not Objectively Intended or Expected: The plaintiff insurer defended the defendant insured in a negligence case under a reservation of rights and initiated a declaratory action to determine whether the policy provided coverage for the claim under which it had a duty to indemnify the insured. At issue in the declaratory action was the interpretation of the term "occurrence" and, correspondingly, its common policy definition as an "accident," and whether an intentional act could be considered an "accident" for purposes of insurance coverage. The Supreme Court held that the policy language defining "accidents" may have included intentional acts if the damages were not objectively intended or expected by the insured. Given the testimony, the Supreme Court determined there were issues of material fact that precluded summary judgment and that further proceedings were necessary to resolve factual issues related to application of the coverage provisions of the policy. Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375, distinguished in Huckins v. United Servs. Auto. Ass'n, 2017 MT 143, 387 Mont. 514, 396 P.3d 121. See also Blair v. Mid-Continent Cas. Co., 2007 MT 208, 339 Mont. 8, 167 P.3d 888, Millers Mut. Ins. Co. v. Strainer, 204 Mont. 162, 663 P.2d 338 (1983), and NW. Nat'l Cas. Co. v. Phalen, 182 Mont. 448, 597 P.2d 720 (1979).

Presence of Insurance Adjuster Rather Than Attorney at Prelitigation Mediation Conference Not Violative of Insurer's Duty to Defend: An insurer sent an insurance adjuster rather than an attorney to a prelitigation mediation conference. Defendant contended that this violated the insurer's statutory duty to defend under the policy. The District Court held that the insurer met its obligation by actively participating in the mediation, and defendant appealed. The Supreme Court noted that the duty to defend encompasses functions that can only be fulfilled by a licensed attorney, but that insurance adjusters play a vital role in the resolution of claims prior to the initiation of litigation and further noted that public policy encourages settlements and avoiding unnecessary litigation. Requiring that counsel be retained for informal settlement conferences could hinder the negotiation process and contravene the policy of encouraging out-of-court settlements. The mediation was not part of any judicial proceeding, and the insurer did not violate its duty to defend by sending an insurance adjuster to mediation. The District Court was affirmed. Farmers Ins. Exch. v. Johnson, 2009 MT 442, 354 M 192, 224 P3d 613 (2009).

Duty to Defend — "Bodily Injury" — "Occurrence": In a federal action based upon diversity jurisdiction in which an insurer sought a declaration of the scope of coverage under an insurance policy, the District Court held that the policy included coverage for "bodily injury". The insured's complaint alleges she suffered such injury. Consequently, the insurer has a duty to defend because the complaint alleges facts that, if proven, would result in coverage. It is the insured's claim that determines the insurer's duty to defend and not whether the injured party can prove an action against the insured for damages. The District Court held that the term "occurrence" as defined in the policy is unambiguous and includes unintended bodily injury, although the insured's operative conduct was intentional. Mut. Serv. Cas. Ins. Co. v. Co-op Supply, Inc. of Dillon, 699 F. Supp. 1438, 45 St. Rep. 2416 (D.C. Mont. 1988).

Scope of Coverage — "Property Damage": In a federal action for wrongful discharge based upon diversity jurisdiction in which an insurer sought a declaration of the scope of coverage under an insurance policy, the District Court held that the term "property damage" that included only damage to "tangible property" does not include loss of past and future salary, loss of health benefits, and other benefits of employment because those are intangible economic losses. Mut. Serv. Cas. Ins. Co. v. Co-op Supply, Inc. of Dillon, 699 F. Supp. 1438, 45 St. Rep. 2416 (D.C. Mont. 1988).

Umbrella Policy — Duty to Defend: In a federal action for wrongful discharge based upon diversity jurisdiction in which an insurer sought a declaration of the scope of coverage under an umbrella insurance policy, the District Court held that the insured's allegations in her complaint of "bodily injury" fall within the scope of coverage under the "personal injury" portion of the policy and therefore create a duty to defend. Mut. Serv. Cas. Ins. Co. v. Co-op Supply, Inc. of Dillon, 699 F. Supp. 1438, 45 St. Rep. 2416 (D.C. Mont. 1988).

Discharge From Employment — Injury to Be Expected — Intentional Conduct Exclusion Applied: Employee claimed he was intentionally fired for refusing to violate Montana law, resulting in emotional and mental injury. The employer tendered the suit to National Surety Corporation, which refused to defend on grounds that the policy did not provide coverage for an occurrence of this sort. The District Court agreed, and the Supreme Court affirmed on the basis that the claimed injury fell outside the definition of "occurrence". Although an intentional act may constitute an occurrence when the alleged injury was not the expected or intended result of the conduct, here there was no injury alleged that could not be expected to flow from the termination. Therefore, the intentional conduct exclusion was properly applied. Daly Ditches Irrigation District v. Nat'l Sur. Corp., 234 M 537, 764 P2d 1276, 45 St. Rep. 2112 (1988), distinguishing Lindsay Drilling v. USF&G, 208 M 91, 676 P2d 203 (1984); Millers Mut. Ins. Co. v. Strainer, 204 M 162, 663 P2d 338 (1983); and NW. Nat'l Cas. Co. v. Phalen, 182 M 448, 597 P2d 720 (1979). See also Mary & Alice Ford Nursing Home v. Fireman's Ins., 446 N.Y.S.2d 599 (1982), Commercial Union Ins. Co. v. Superior Court, 242 Cal. Rptr. 454, 196 Cal. App. 3d 1205 (1987), and Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375.

Duty to Investigate — No Duty to Defend Absent Applicable Coverage: Insurers have the duty to investigate claims and coverage promptly, and not only covered claims. However, when the allegations of a complaint demonstrate that no coverage exists, an insurer has no duty to indemnify or defend. Daly Ditches Irrigation District v. Nat'l Sur. Corp., 234 M 537, 764 P2d 1276, 45 St. Rep. 2112 (1988), citing McClear v. St. Paul Ins. Co., 158 M 452, 493 P2d 331 (1972). McClear was followed in Brabeck v. Employers Mut. Cas. Co., 2000 MT 373, 303 M 468, 16 P3d 355, 57 St. Rep. 1596 (2000).

Insurance Estoppel Case — General Rule: In affirming a District Court ruling that Safeco Insurance Company was estopped to deny coverage as a matter of law, the Supreme Court adopted the general rule in an insurance estoppel case set forth in 14 Couch, Insurance 2d, 51.85 (2d ed. 1982), as follows: "Where an insurer, without reservation and with actual or presumed knowledge, assumes the exclusive control of the defense of claims against the insured, it cannot thereafter withdraw and deny liability under the policy on the ground of noncoverage, prejudice to the insured by virtue of the insurer's assumption of the defense being, in this situation, conclusively presumed ... the loss of the right of the insured to control and manage the case is itself prejudicial." The court further noted the requirement in 33-18-201 that the insurer promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim. Finally, the court cited a similar decision in Transamerica Ins. Group v. Chubb & Son, Inc., 554 P2d 1080 (Wash. 1976), where insureds were defended without reservation of rights for 10 months before the insurance company withdrew from the case, noting that in that case the Washington Court found a presumption of prejudice and granted summary judgment. Safeco Ins. Co. v. Ellinghouse, 223 M 239, 725 P2d 217, 43 St. Rep. 1689 (1986), distinguished in Portal Pipe Line Co. v. Stonewall Ins. Co., 256 M 211, 845 P2d 746, 50 St. Rep. 30 (1993).

Business Pursuits — Steer-Roping Contest: Insured's policy on his ranch excluded business pursuits other than, among other things, farming. For 3 years he held three or four steer-roping contests a year in an arena he built. Nonprofessionals paid a fee and there was prize money, with insured keeping some of the fee money. Insured's own testimony showed he was regularly engaged in the contests for profit and thus was engaged in a business pursuit excluded from policy coverage. A summary judgment for insurer was therefore proper in insured's suit for failure to defend insured and pay an injured steer roper because there was no issue of material fact. Heggen v. Mtn. W. Farm Bureau Mut. Ins. Co., 220 M 398, 715 P2d 1060, 43 St. Rep. 475 (1986).

No Duty to Defend if No Coverage Under Policy: The insured's liability policy includes coverage for accidental occurrences but not for damage that is intentional or expected. The damage for which the insured claims coverage was expected and thus is not covered by the terms of the policy. The insurer has no duty to defend the insured if there is no liability to the insured under the policy provisions. USF&G v. Rae Volunteer Fire Co., 212 M 450, 688 P2d 1246, 41 St. Rep. 1857 (1984), followed in Burns v. Underwriters Adjusting Co., 234 M 508, 765 P2d 712, 45 St. Rep. 2089 (1988), distinguishing NW. Nat'l Cas. Co. v. Phalen, 182 M 448, 597 P2d 720 (1979). See also Grimsrud v. Hagel, 2005 MT 194, 328 M 142, 119 P3d 47 (2005), and Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375.

Breach by Refusal to Defend: Insured made repeated requests of the insurer to assume the defense in a wrongful death action, but the insurer refused to do so or failed to respond. The insured was forced to retain counsel for the wrongful death action and a declaratory judgment action which culminated in a finding that the insurer was liable for coverage. The insurer's refusal to defend constituted a breach of contract rendering it liable for defense costs. Truck Ins. Exch. v. Woldstad, 212 M 418, 687 P2d 1022, 41 St. Rep. 1750 (1984).

Duty to Defend — Intentional Versus Negligent Damage — Covered Occurrence: Plaintiff was retained to drill test holes on placer claims. The claim owners refused to pay plaintiff, causing plaintiff to foreclose on a mechanics' lien. The claim owners then counterclaimed, alleging plaintiff had intentionally or negligently salted the test results. Plaintiff tendered defense of the counterclaim to his insurer, the defendant. Defendant refused to defend, contending the allegations of the counterclaim were not covered by the insurance policy. The policy excluded from coverage damage "intended from the standpoint of the insured". The Supreme Court held that if the salting was done by third parties as a result of plaintiff's negligence, the action was covered by the policy. The drilling expense and inherent production costs established an intrinsic value in the core samples. There was a tangible property loss within the policy's coverage. The counterclaim set forth a covered "occurrence" as defined in the policy, and defendant was obliged to defend the counterclaim. Lindsay Drilling v. USF&G, 208 M 91, 676 P2d 203, 41 St. Rep. 193

(1984), distinguished in Portal Pipe Line Co. v. Stonewall Ins. Co., 256 M 211, 845 P2d 746, 50 St. Rep. 30 (1993).

Liability for Failure to Defend Suit Against Insured: Adjoining landowner sued insured for interference with his easement rights, title insurance companies refused to defend, insured hired his own counsel, the suit was settled, and adjoining landowner again sued insured when insured refused to abide by the settlement. The insurers again refused to defend. The policy obligated insurers to defend any litigation founded upon a defect, lien, encumbrance, or other matter insured against. Insurers had failed to disclose and insure against the easements, though they were contained in the title records. The insurers acted in bad faith in refusing to defend the first suit but not in refusing to defend the second suit, since it arose from insureds' refusal to abide by the settlement in the first suit. Insurers were liable to insured for his costs in defending the first suit, and punitive damages could be imposed for failure to defend. Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982).

DUTY TO SETTLE

Payment of Policy Limits to Injured Party Without Release for Insured — Insurer Not in Breach of Duty to Insured: On a question certified from the federal District Court, the Supreme Court held that in the wake of a motor vehicle accident, when the liability for the accident is reasonably clear and it is reasonably clear that the total damages caused by the insured party exceed the insurance policy limits, the insurer is not in breach of a duty to the insured by paying the injured party the policy limits without obtaining a release for its insured. High Country Paving, Inc. v. United Fire & Cas. Co., 2019 MT 297, 398 Mont. 191, 454 P.3d 1210.

Summary Judgment Improper Given Question of Insurer's Failure to Act in Good Faith in Settling Claim: Plaintiffs moved for summary judgment on the issue of whether defendant insurer violated the statutory duty in 33-18-201 to act in good faith to effectuate prompt settlement of plaintiffs' claim. Although the record contained little evidence favorable to defendant, the Supreme Court noted that the insurer did make an affirmative effort, following an earlier suit regarding liability to pay plaintiffs' claims, to ensure that plaintiffs' future claims would not be wrongfully denied by placing a note to that effect in plaintiffs' file. The insurer also made a remedial effort to pay plaintiffs' claim just over 2 months following the wrongful denial. Given these circumstances, the issue of breach of the duty to act in good faith was a question of fact for a jury, rather than an issue appropriate for summary judgment based on defendant's liability as a matter of law, and the District Court correctly denied plaintiffs' motion. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008).

Admissibility of Documents Held by Insurer When Adjusting Claim — Hearsay Exception Inapplicable: Plaintiffs asserted that defendant insurance company committed unfair trade practices in settling plaintiffs' claim against two insured doctors for malpractice. At trial, the District Court refused to admit as hearsay correspondence written to the insurer by plaintiffs' counsel during settlement negotiations, allowing the insurer to suggest that plaintiffs did not want or try to settle the malpractice claim. The Supreme Court held that the District Court abused its discretion and committed reversible error by not admitting the correspondence. The unfair trade practices claims tested the propriety of actions taken or not taken by the insurer in light of information possessed by the insurer at the time that the underlying malpractice claim was adjusted, so the correspondence was not merely testimonial evidence subject to a hearsay objection in the absence of the author. Thus, the insurer could not block admission of documents held when adjusting the claim. Peterson v. The Doctors' Co., 2007 MT 264, 339 M 354, 170 P3d 459 (2007), followed in Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008).

Assessment of Reasonableness Question of Law — Summary Judgment for Insurer Appropriate: Redies sued the Attorneys Liability Protection Society (ALPS) for allegedly engaging in unfair trade practices by failing to promptly settle a legal malpractice suit against one of the ALPS's insureds, for alleged tortious breach of statutory duties, and for breach of implied duty of good faith and fair dealing. At the time that the ALPS refused to settle, Montana law did not unequivocally recognize a professional duty running from a lawyer for a conservator to a nonclient beneficiary, such as Redies, although a subsequent Supreme Court case signaled that an attorney may owe a duty to nonclients in some contexts. The District Court granted summary judgment, and the Supreme Court upheld. The Supreme Court found that the ALPS had a reasonable basis in law for contesting Redies' claims at the time that the decision was made. The court clarified that although the assessment of reasonableness generally is within the province of the jury or factfinder, reasonableness is a question of law for the court to determine when it depends entirely on interpreting relevant legal precedents and evaluating the insurer's proffered defense under those precedents. Redies v. Attorneys Liability Protection Soc'y, 2007 MT 9, 335 M 233, 150 P3d 930 (2007), distinguished in Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

Insurer Required to Pay Undisputed Medical Coverage Without Settlement Agreement When Liability Reasonably Clear — No Bad Faith Claim for Pre-Watters Conditioned Settlement Offer: Defendant insurer offered to pay plaintiffs the policy limit of $1 million in exchange for a full release of claims against the insureds. Plaintiffs refused to provide a release, the case went to trial, and plaintiffs were awarded more than $3 million. Plaintiffs then counterclaimed against the insurer, claiming that refusal to pay the undisputed medical claims without a release violated subsections (6) and (13) of this section. The Supreme Court noted that the purpose of 33-18-201 is to ensure prompt payment of damages for which an insurer is clearly obligated. Thus, pursuant to Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997), and Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626 (2000), the insurer had a duty to pay plaintiffs' undisputed medical expenses up to the limits of its coverage and without the benefit of a settlement agreement. Nevertheless, because the insurer made its settlement offer in 1998, more than 2 years prior to the Watters decision, the insurer had an arguably reasonable basis under 33-18-242 for asserting that it was entitled to condition payment of policy limits on plaintiffs' provision of a release of claims, so the insurer was not liable for acting in bad faith in violation of this section. Shilhanek v. D-2 Trucking, Inc., 2003 MT 122, 315 M 519, 70 P3d 721 (2003), overruling Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), and overruling Watters to the extent that Watters implies that an insurer's obligation under Ridley is limited to the minimum coverage required by the Motor Vehicle Safety-Responsibility Act. See also High Country Paving, Inc. v. United Fire & Cas. Co., 2019 MT 297, 398 Mont. 191, 454 P.3d 1210.

Material Question Regarding Insurer's Duty to Investigate Claim Information — Summary Judgment Improper: Plaintiffs asserted that defendant insurer violated subsection (4) of this section by declining to investigate the accident or plaintiffs' injury claims and make advance payments to cover plaintiffs' medical expenses. The District Court determined that because the insurer had attempted to discover the amount of plaintiffs' outstanding medical expenses and had forwarded a check for $5,000 to cover outstanding expenses, which was rejected by plaintiffs, summary judgment for the insurer was appropriate. The Supreme Court reversed. A genuine issue of fact remained regarding whether the insurer conducted a reasonable investigation, so the issue was not properly resolved with summary judgment. Shilhanek v. D-2 Trucking, Inc., 2003 MT 122, 315 M 519, 70 P3d 721 (2003).

No Liability Per Se for Paying Mandatory Minimum Policy Limits — Avoiding Liability Through Coerced Economic Necessity: Guaranty National Insurance Co. (Guaranty) provided a minimum motor vehicle liability policy for Moore, who was clearly liable for injuring the Watterses in a car accident. Guaranty offered to settle the Watterses' claim to the extent of the policy coverage, but not without an absolute release of all liability. Guaranty argued that without a full release, it would be subject to a bad faith claim by Moore for placing the interests of a third-party claimant above those of its insured to whom it owed a fiduciary duty. The Supreme Court noted that under 33-18-242, an insured, but not a third-party claimant, is prohibited from bringing a bad faith action in connection with the handling of a claim. In purchasing the minimum required statutory coverage, Moore could not have reasonably expected that Guaranty would be obligated to provide greater coverage than that purchased by demanding a full liability release as a condition of paying the limits of the minimum coverage. When the monetary consequences of a person's tortious conduct undisputedly exceed policy limits and liability is clear, the only incentive for an injured third-party claimant to settle for policy limits and provide the insured with an absolute release from liability is some form of coerced economic necessity. Compelling an innocent third party to proceed to trial to recoup that which is already owed is inconsistent with public policy to encourage settlement and avoid unnecessary litigation. Guaranty would not have been exposed to per se liability for bad faith from Moore by paying the policy limits. Thus, when liability resulting from an automobile accident is reasonably clear and a third-party claimant's damages undisputedly exceed mandatory minimum policy limits pursuant to 61-6-103, the prompt, fair, and equitable settlement of the claims cannot be forestalled by an insurer based on an illusory bad faith or breach of contract claim that an insured may bring, and to refuse payment based on such an unfounded potential liability is itself a deceptive practice within the meaning of this section. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), following Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997).

Purpose of Mandatory Liability Insurance Law — Absolute Liability of Insurer Not Applicable to Coverage in Excess of Statutory Minimum: The mandatory liability insurance law seeks to protect members of the general public who are innocent victims of automobile accidents and was enacted for the benefit of the public, rather than for the benefit of the insured. The liability of an insurance carrier with respect to motor vehicle mandatory liability insurance becomes absolute whenever injury or damage covered by the policy occurs, but the absolute liability standard does not apply to insurance coverage that exceeds the mandatory minimum limits. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000).

Unfair Trade Practice to Require Full and Final Release of Liability Before Claim Paid Within Policy Limits — "Settlement" Distinguished From "Release": Guaranty National Insurance Co. (Guaranty) provided a minimum motor vehicle liability policy for Moore, who was clearly liable for injuring the Watterses' in a car accident. Guaranty offered to settle the Watterses' claim to the extent of the policy coverage, but not without an absolute release of all liability. The Watterses declined the offer, eventually bringing an unfair trade action against Guaranty for failing to promptly pay damages for which Moore was liable. Guaranty argued that the full release from liability was necessary to effectuate a settlement, citing Thompson v. St. Farm Mut. Auto. Ins. Co., 161 M 207, 505 P2d 423 (1973), and Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), and contended that because no settlement was proffered from the Watterses, Guaranty could not, as a matter of law, have violated this section. The Supreme Court instead applied Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997). The court clarified the relevant terms, noting that in accord with the general governing principles of contract law from which the law of settlements is derived, in the context of the Unfair Trade Practices Act, a settlement is synonymous with an enforceable bilateral contract that discharges a future or existing obligation, while a release, as a matter of law, is nothing more than an accord and satisfaction or one of several ways in which an obligation may contractually be discharged or settled for less than or for something different than from what is owed. The court concluded that a settlement between Guaranty and the Watterses was legally possible without the Watterses executing a full and final release of all liability, as evidenced by Guaranty's settlement of the Watterses' property damage claims within the limits of Moore's policy without a release. Thus, when liability resulting from an automobile accident is reasonably clear and a third-party claimant's damages undisputedly exceed mandatory minimum policy limits pursuant to 61-6-103, it is an unfair trade practice per se under this section for an insurer to condition the payment of the owed mandatory minimum policy limits on the third party's agreement to provide a full and final release of all liability in favor of an insured. An insurer who pays mandatory minimum policy limits under these circumstances does not act in bad faith per se against its insured by not obtaining a full and final liability release on the insured's behalf. Unfortunately for the Watterses, under the case law in effect at the time, Guaranty had a reasonable basis under Juedeman upon which to deny payment of policy limits, so Guaranty's cross-motion for summary judgment was granted. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), overruling Thompson v. St. Farm Mut. Auto. Ins. Co., 161 M 207, 505 P2d 423 (1973), and Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), and overruled in Shilhanek v. D-2 Trucking, Inc., 2003 MT 122, 315 M 519, 70 P3d 721 (2003), to the extent that Watters implies that an insurer's obligation under Ridley is limited to the minimum coverage required by the Motor Vehicle Safety-Responsibility Act. See also High Country Paving, Inc. v. United Fire & Cas. Co., 2019 MT 297, 398 Mont. 191, 454 P.3d 1210.

Failure to Effectuate Insurance Settlement in Good Faith as Independent Cause of Action: Under this section, an insurer is required to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. A violation of this provision gives rise to an independent cause of action under 33-18-242. Because the continuing duty of good faith is not ended by commencement of a lawsuit by an insured, that duty can be breached by an insurer's postfiling conduct, including the actions of attorneys conducting the insurer's defense. Amendment of the claim to include an action under 33-18-242 related back to the original claim and was properly allowed. Further, third-party defendant's alleged failure to conduct a reasonable investigation and its subsequent refusal to pay the claim, although occurring more than 2 years before commencement of plaintiff's cause of action, were, if proved, ostensibly part of the bad faith postjudgment conduct. Thus, the evidence of those acts was not time-barred. Federated Mut. Ins. Co. v. Anderson, 1999 MT 288, 297 M 33, 991 P2d 915, 56 St. Rep. 1152 (1999), following Safeco Ins. Co. v. Ellinghouse, 223 M 239, 725 P2d 217, 43 St. Rep. 1689 (1986), and Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993).

Insurer Liable for Payment When Liability Clear — Legislative Amendment Poor Evidence — Purpose of Statute — Leveraging Under One Coverage Prohibited — Juedeman Overruled: Guaranty National admitted 90% of the liability for an accident involving Ridley and its insured, Roope, but refused to pay Ridley's medical expenses without settling all of Ridley's claim against Roope. Ridley filed an action for a declaratory judgment against Guaranty National, asking the District Court to find that Guaranty National had a duty to pay medical expenses under this section. The District Court concluded that Guaranty National had no obligation to pay Ridley's medical expenses until final settlement of all claims arising from the accident. The Supreme Court reversed, holding that subsections (6) and (13) of this section impose an obligation on an insurer to pay claims when liability is reasonably clear, including claims submitted under the same type of coverage from an insurer. The Supreme Court based its decision on the following: (1) any contrary decisions by the U.S. District Court in Montana are not binding on Montana courts; (2) any construction of the statute based upon action that one Legislature failed to take to amend the statute was a "hazardous basis" for inferring intent of a previous Legislature when it enacted this section; (3) the purpose of the statute is to encourage prompt settlement of claims and is more consistent with the state's public policy expressed in 61-6-301 through 61-6-304; and (4) it was the "leveraging" of undisputed claims (using the payment of one claim to settle other claims in a manner to the insurer's advantage) that the Legislature sought to prohibit when it enacted the statute. To the extent that the Supreme Court implied in Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), that the requirements of subsections (6) and (13) of this section apply only to one claim or more than one claim under different types of coverage, that implication was overruled by the Supreme Court. Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997), followed in Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000).

Power of Court in Declaratory Judgment Action — Justiciable Controversy Presented — Brisendine Distinguished: Guaranty National admitted 90% of the liability for an accident involving Ridley and its insured, Roope, but refused to pay Ridley's medical expenses without settling all of Ridley's claim against its insured. Ridley filed an action for a declaratory judgment against Guaranty National, asking the District Court to find that Guaranty National had a duty to pay medical expenses under this section. Citing Brisendine v. Dept. of Commerce, 253 M 361, 833 P2d 1019 (1992), the District Court held that the controversy was not justiciable under the Uniform Declaratory Judgments Act, because there were still factual issues left to be decided, and granted Guaranty National's motion for summary judgment. The Supreme Court distinguished Brisendine and noted that under the Uniform Declaratory Judgments Act, a party is entitled to a decision whether or not it determines all of the issues between the parties to the action. The Supreme Court also noted that Guaranty National had some legal basis for claiming that it could not legally settle part of Ridley's claims because two opinions of the U.S. District Court in Montana incorrectly construed 33-18-242(5) concerning an insurer's liability if the insurer has a reasonable basis in law or fact for contesting the claim. For these reasons, the Supreme Court concluded that the District Court erred when it granted the insurer's motion for summary judgment. Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997), followed and clarified in DuBray v. Farmers Ins. Exch., 2001 MT 251, 307 M 134, 36 P3d 897 (2001), insofar as nothing in Ridley or in Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834 (2000), which followed Ridley, suggests that its scope should be limited to undisputed medical expenses.

Questionable Basis for Denial of Claim — Directed Verdict Inappropriate: Under common law and 33-18-242, an insurer cannot be held liable for bad faith in denying a claim if the insurer had a reasonable basis for contesting the claim or the claim amount. As determined in St. Paul Fire & Marine Ins. Co. v. Cumiskey, 204 M 350, 665 P2d 223 (1983), an insurer may file a declaratory judgment action to obtain a determination of the validity, continuance, or coverage of the policy, the extent of liability, or the insurer's duty under the policy. However, a directed verdict is not required simply because a reasonable basis may exist to deny coverage. If reasonable people could draw different conclusions about whether an insurer had a reasonable basis for contesting a claim, the issue becomes more than a question of law and a directed verdict is inappropriate. Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993).

No Error in Court's Refusal to Strike Punitive Damages Award — Interpretation of Testimony Sustained: Dees sued American National Fire Insurance Company, alleging that the insurer was guilty of actual malice in failing to settle his claim for crop damage caused by hail. Testimony at trial showed that the insurance adjusters did not examine adjacent fields to determine whether any damage had occurred there, nor did they consult experts to determine how Dees' variety of wheat differed in hail damage compared to other varieties of wheat. An executive officer of the insurer also testified on the issue of punitive damages by using language that could be interpreted to mean that in a future similar situation, the insurer would take action to get the attention of its adjusters to change their investigation and adjustment procedures. The Supreme Court held that the jury could have concluded that there was clear and convincing evidence that American National was guilty of malice as defined in 27-1-221(2). The Supreme Court also held that the District Court Judge was in the best position to hear and evaluate the testimony of the insurer's executive and to determine whether the requirements for punitive damages had been met. The District Court therefore did not err in refusing to strike the award of punitive damages. Dees v. Am. Nat'l Fire Ins. Co., 260 M 431, 861 P2d 141, 50 St. Rep. 1068 (1993).

Refusal to Settle Hail Damage Claim — Denial of Claim Without Reasonable Investigation — Jury Question: Dees insured his wheat crop against hail damage with American National Fire Insurance Company. Immediately after a hailstorm caused damage to his fields, Dees telephoned American National, but an adjuster did not arrive until 3 weeks later. After inspecting the fields, American National refused to pay for the damage, claiming that the loss was because of wind and not hail. Both Dees and American National submitted evidence at trial supporting their respective theories on the cause of the damage to the wheat. The District Court refused to grant American National's motion for summary judgment, and the jury found for Dees. The Supreme Court held that the District Court did not err in refusing to grant the insurer's motion for summary judgment and motion for a directed verdict. Summary judgment should not have been granted because there was a genuine issue of material fact as to whether American National had denied Dees's claim without reasonable investigation. Likewise, a directed verdict would have been improper because a directed verdict may be granted only if there is a complete lack of evidence to warrant submission of the case to a jury. Dees v. Am. Nat'l Fire Ins. Co., 260 M 431, 861 P2d 141, 50 St. Rep. 1068 (1993).

Denial of Insurer's Argument That Frivolous Claims Justified: Farmers Insurance admitted that its counterclaim was frivolous but argued that it did not violate the unfair trade practices laws because the claim was made in order to give the insurer more leverage in settlement negotiations. The Supreme Court held that it was not inclined to exalt form over substance and ruled that the frivolous claim was an unfair trade practice. O'Fallon v. Farmers Ins. Exch., 260 M 233, 859 P2d 1008, 50 St. Rep. 1022 (1993).

Third-Party Claimant — Determination: The defendant in a personal injury case filed a counterclaim against the plaintiffs, alleging that their negligence was the cause of the automobile accident involving the parties. Subsequently, in his deposition, the defendant admitted that he had been intoxicated at the time of the accident, that he had been driving negligently, and that the plaintiffs had not been negligent. The plaintiffs sought summary judgment to dismiss the defendant's counterclaims, but prior to the hearing, the defendant voluntarily dismissed his counterclaims. The plaintiffs then sought damages from the insurer for bad faith in violation of its statutory duty to settle a claim when liability becomes reasonably clear. On appeal, the defendant's insurance company argued that the plaintiffs had no standing to sue under the unfair trade practices laws because they were not "insureds" or "third-party claimants" as those terms are used in 33-18-242. The Supreme Court held that the plaintiffs had alleged that they were injured by the insurer's violation of its duty to settle and therefore were third-party claimants within the meaning of the statute. O'Fallon v. Farmers Ins. Exch., 260 M 233, 859 P2d 1008, 50 St. Rep. 1022 (1993).

Conditioning Payment of Son's Bodily Injury Claim on Mother's Release of Loss of Consortium Claim Not Leveraging: Juedeman argued that Farmers Union had violated this section, which prohibits leveraging, by conditioning payment of her son's claim for bodily injury on her release of her loss of consortium claim. A violation of this section requires a manipulation of two coverages. An insurer must withhold prompt settlement of a reasonably clear liability claim under one coverage in order to influence a claim arising out of another coverage. The Supreme Court held that the insurance company had not engaged in leveraging because both claims arose from only one coverage under the policy. Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191, 49 St. Rep. 544 (1992), overruled in Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997).

No Existence of Offer of Settlement Without Agreement to Release: Plaintiff, Juedeman, contended that Farmers Union failed to make a good faith attempt to effectuate a fair settlement by insisting that Juedeman release Farmers Union's insured's estate. The Supreme Court held that plaintiff's refusal to agree to the release was the cause for the delay in payment and therefore there could be no bad faith claim against the insurance company. Juedeman v. Nat'l Farmers

Union Property & Cas. Co., 253 M 278, 833 P2d 191, 49 St. Rep. 544 (1992), distinguished and overruled in Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), and overruled in its entirety in Shilhanek v. D-2 Trucking, Inc., 2003 MT 122, 315 M 519, 70 P3d 721 (2003).

Standard of Good Faith and Fair Dealing Applicable to Self-Insurer: A fire, caused by a floating power line owned and maintained by Montana Power Company (MPC) destroyed plaintiff's home and property. In filing a negligence action against MPC, plaintiff also alleged that MPC had breached an implied covenant of good faith and fair dealing and violated Title 33, ch. 18, commonly known as the Unfair Trade Practices Act (Act) in the settlement of plaintiff's claim. At trial, the jury was instructed that duties described in the Act applied to MPC. On appeal, MPC argued that the District Court erred, contending that the Act does not apply to a self-insurer such as MPC. The Supreme Court ruled that while the Act does not apply to MPC, "a self-insurer, such as MPC which has a claims department, is held to a standard of good faith and fair dealing when settling claims against it". Ogden v. Mont. Power Co., 44 St. Rep. 330 (1987); on reconsideration, opinion withdrawn and replaced by a holding that the Montana Insurance Code's Unfair Trade Practices Act does not apply to a self-insured entity. Ogden v. Mont. Power Co., 229 M 387, 747 P2d 201, 44 St. Rep. 2068 (1987), followed in Martel v. Mont. Power Co., 231 M 96, 752 P2d 140, 45 St. Rep. 460 (1988).

Insurer's Duty to Settle Third-Party Claim Within Policy Limits — Evidence to Support Bad Faith: Plaintiff, a Kalispell ophthalmologist, pierced Frisnegger's eyeball with a needle while administering a local anesthetic to his eyelid. A cataract formed on the eye. Plaintiff notified his local insurance agent and on his direction notified defendant in writing that plaintiff was entirely at fault. Frisnegger filed suit against plaintiff. Defendant did not feel the claim was worth over $45,000 and refused to settle within the policy limits of $100,000. A jury verdict was returned for Frisnegger in the amount of $175,000. Plaintiff then brought suit against defendant alleging negligence and bad faith on the part of defendant for failure to settle the claim within policy limits. A jury verdict awarding plaintiff compensatory damages of $250,000 and punitive damages of $300,000 was returned. On appeal, the Supreme Court stated that the duty to accept a reasonable offer within policy coverage limits arises from an implied covenant of good faith and fair dealing that neither party will do anything which will injure the right of the other to receive the benefits of the agreement. One of the usual benefits of liability insurance is the settlement of claims without litigation or at least without trial if the cause is litigated. The implied obligation of good faith and fair dealing requires the insurer to settle in an appropriate case, although not required by the express terms of the policy. Where a liability insurance company by the terms of its policy obtains from the insured an irrevocable power to determine whether to accept or reject an offer of compromise, a fiduciary duty between the insured and insurer is created. The court applied the six-factor test set out in Jessen v. O'Daniel, 210 F. Supp. 317 (D.C. Mont. 1982). The court found that the failure of defendant through its agents to follow established standards of investigation, evaluation, negotiation, and communication with its insured were sufficient factors to uphold the jury's finding of bad faith. Gibson v. W. Fire Ins. Co., 210 M 267, 682 P2d 725, 41 St. Rep. 1048 (1984).

Punitive Damages — Insurance Settlement Practices: Plaintiff's son purchased life insurance, including an accidental death rider, from defendant. The son was found dead in a Bozeman motel room. The death was determined to be an overdose of chloroform through inhalation. The policy rider excluded payment on death due to suicide or drug overdose. On June 11, 1980, defendant sent plaintiff a check for the basic policy amount with a restrictive endorsement on the back. Plaintiff contested the denial of accidental death benefits. On August 20, plaintiff returned the tendered check, and on September 5, 1980, filed suit against defendant seeking actual and punitive damages. On September 9, 1980, defendant mailed the same check without the restrictive endorsement. A jury found that the plaintiff was not entitled to the accidental death benefits but awarded $30,000 in punitive damages. Defendant appealed. In order to award punitive damages there would have had to be a violation of the insurance laws for which a penalty is prescribed and actual damages. The court found that a restrictive endorsement as a general business practice in contested settlements was an unfair claim settlement practice. The actual damages were lost interest earnings and out-of-pocket expenses for legal counsel. Actual damages need only be nominal in order to award punitive damages. Harris v. Am. Gen. Life Ins. Co., 202 M 393, 658 P2d 1089, 40 St. Rep. 164 (1983).

Action Against Defendant's Insurer Prosecuted Jointly With Action Against Defendant — Failure of Duty to Settle: This section, in conjunction with 33-18-1004 and 27-1-104, gives rise to a civil action by a claimant against defendant's insurer because the obligation imposed by this section to fairly settle includes claimants as well as insureds. Because the action is independent of the ultimate liability of the defendant, it may be prosecuted jointly with an action against the defendant insured, and since Rule 411, Montana Rules of Evidence, only prohibits the introduction of insurance for the purpose of showing negligence or liability, the separate issue involved does not give rise to a violation of the rule. Klaudt v. Flink, 202 M 247, 658 P2d 1065, 40 St. Rep. 64 (1983), overruled in Fode v. Farmers Ins. Exch., 221 M 282, 719 P2d 414, 43 St. Rep. 814 (1986). Fode was distinguished in Peris v. Safeco Ins. Co., 276 M 486, 916 P2d 780, 53 St. Rep. 481 (1996).

Punitive Damages — Malice Implied: The insurer's conduct was both harmful to the insured and unlawful because it violated a statute. Its malice will therefore be implied because its actions were unjustifiable, and punitive damages are justified in such a case. First Sec. Bank v. Goddard, 181 M 407, 593 P2d 1040 (1979).

Tort Action — Failure to Pay Promptly: An insurer has not only a contractual duty to make payment of a valid claim but a statutory duty to do so as soon as possible. It is the breach of that statutory requirement, a duty independent of the insurance contract, that gives rise to tort liability. The measure of damages in such a case is provided in 27-1-317. First Sec. Bank v. Goddard, 181 M 407, 593 P2d 1040 (1979).

Punitive Damages — Failure to Pay: If insurance company stalled payment on claim deliberately and ultimately failed to pay, breach of insurance contract was also violation of Insurance Code and punitive damages could be awarded. Helton v. Reserve Life Ins. Co., 399 F. Supp. 1322 (D.C. Mont. 1975).

Exemplary and Punitive Damages — Insurer Maliciously Avoids Payment: If insurance company stalled payment on claim deliberately, and ultimately failed to pay, breach of insurance contract was also violation of insurance code, and punitive damages could be awarded. Helton v. Reserve Life Ins. Co., 399 F. Supp. 1322 (D.C. Mont. 1975).

Credit Disability Insurance — Punitive Damages Not Barred: The District Court erred in granting the defendant insurer's motion to strike the plaintiff's claim for punitive damages arising out of the defendant's refusal to pay on a credit disability insurance policy. The general rule that exemplary damages are not allowed in actions arising out of breach of contract would not preclude award of exemplary damages where acts constituting alleged breach of contract also violated state law. State ex rel. Larson v. District Court, 149 M 131, 423 P2d 598 (1967), distinguished in State ex rel. Cashen v. District Court, 157 M 40, 482 P2d 567 (1971).

Law Review Articles

The Breaking of a Wave: Jacobsen v. Allstate Ins. Co. And Class Certification, Hamilton, 76 Mont. L. Rev. 157 (2015).

Picking Up the Pieces: The Excess Insurer's Bad Faith Clause of Action Against the Primary Insurer, Jenks, 54 Mont. L. Rev. 385 (1993).

The Continuing Development of the Tort of Bad Faith in Montana, Graham & Luck, 45 Mont. L. Rev. 43 (Winter 1984).

An Insurer's Liability for the Tort of Bad Faith, Harman, 42 Mont. L. Rev. 67 (Winter 1981).

33-18-202. Misrepresentation and false advertising of policies prohibited.

Administrative Rules

Title 6, chapter 6, subchapter 7, ARM Life insurance illustrations.

Case Notes

Expert Testimony Not Needed on Insurance Agent's Standard of Care in Procuring Requested Insurance: In an insureds' negligence and contract action against an insurance agency for failure to procure requested coverage, an insurance agent testified as to the duties and responsibilities of an insurance agent when asked to procure specific insurance. Expert testimony on the insurance agent's standard of care and breach of the standard was not required. Fillinger v. NW. Agency, Inc., of Great Falls, 283 M 71, 938 P2d 1347, 54 St. Rep. 500 (1997).

Insurance Agent's Failure to Procure Requested Coverage — Duty of Insured to Read Policy and Confirm Requested Coverage: The jury reasonably found that it was not unreasonable for husband and wife to have not read the insurance policy covering their outfitting business and that it was reasonable for them to act in reliance upon the representations of their insurance agent. The insureds did not have an absolute duty to read the policy. Failure to read a policy might amount to contributory negligence, but that is a question for the jury. The husband testified that he asked the agent for a policy that would cover everything, especially if someone were hurt on a horse, and that he was told that it would. He asked the same question for a number of years each time that the policy was renewed and was always given an affirmative answer. The agent testified that the husband frequently asked about and was concerned about "horse rider" coverage. When an accident occurred involving a horse, the agent told the husband that the bills would be paid. However, the insurance company failed to pay the bills, and the insured sued the agent for negligence and breach of contract. Fillinger v. NW. Agency, Inc., of Great Falls, 283 M 71, 938 P2d 1347, 54 St. Rep. 500 (1997). See also Bailey v. St. Farm Mut. Auto. Ins. Co., 2013 MT 119, 370 Mont. 73, 300 P.3d 1149, in which the Supreme Court concluded that the District Court's award of summary judgment to the insurer was improper because a genuine issue of material fact existed as to why discrepancies in coverage occurred when the insureds transferred their automobile policy from Oregon to Montana and requested that the insurer procure the same coverage.

Insurance Agents Subject to This Law in Procuring Insurance for Insureds: The relationship between insureds and an insurance agency in regard to insurance that the agency procures for insureds clearly involves the business of insurance, and misrepresentations of coverage by an insurance agent of the agency are prohibited trade practices. Fillinger v. NW. Agency, Inc., of Great Falls, 283 M 71, 938 P2d 1347, 54 St. Rep. 500 (1997).

33-18-203. False or deceptive advertising prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 6.6.2507 Health maintenance organizations — prohibited practices.

Case Notes

Registration as Agency and Use of Agency Designation in Correspondence — Violation: A licensed nonresident insurance agent registered an assumed name as an agency with the Secretary of State and ordered and used stationery with the agency name and the address of his Billings office for correspondence related to his insurance sales in Montana. These actions violated the provisions of this section prohibiting the untrue, deceptive, or misleading representation of the insurance business. Trout v. Bennett, 252 M 416, 830 P2d 81, 49 St. Rep. 303 (1992).

Libel Per Se: A newspaper ad warning buyers of life insurance about representations by certain agents and requesting that they report proposals offered to the Insurance Commissioner for his opinion was libelous per se. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F. Supp. 274 (D.C. Mont. 1958).

33-18-204. Twisting prohibited.

Administrative Rules

Title 6, chapter 6, subchapter 3, ARM Replacement of life insurance.

ARM 6.6.506 Prohibited policy provisions — Medicare supplements.

Case Notes

Allegation of Libelous Misrepresentations: Where complaint of private corporation, doing a life insurance business, alleged that ad in newspaper was published concerning it and its policy and that the representations were misrepresentations, it was entitled to an opportunity to prove its charges. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F. Supp. 274 (D.C. Mont. 1958).

Interference With Insurance Contracts: Sections 40-1940 and 40-1941, R.C.M. 1947 (since repealed), were designed for the protection of insurance companies as well as for the protection of the public and prohibited interference with contracts of insurance which interference had for its purpose the substitution of a new policy for the one interfered with. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F. Supp. 274 (D.C. Mont. 1958).

Libel Per Se: A newspaper ad warning buyers of life insurance about representations by certain agents and requesting that they report proposals offered to the Insurance Commissioner for his opinion was libelous per se. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F. Supp. 274 (D.C. Mont. 1958).

33-18-205. Filing or publishing false financial statements or making false entries prohibited.

Compiler's Comments

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

33-18-206. Unfair discrimination prohibited — life insurance, annuities, and disability insurance.

Compiler's Comments

1991 Amendment: Inserted (3) prohibiting an insurer from refusing to consider certain insurance applications on the basis of genetic condition, developmental delay, or developmental disability; inserted (4) providing that rejection of an application or determination of policy conditions on grounds stated in subsection (3) constitutes unfair discrimination except in certain cases; and inserted (5) defining developmental delay, developmental disability, and genetic condition.

Applicability: Section 2, Ch. 318, L. 1991, provided: "[This act] applies to disability or life insurance policies or contracts applied for, delivered, issued for delivery, or renewed in this state on or after October 1, 1991."

Administrative Rules

ARM 6.6.2104 Jurisdiction and applicability date.
ARM 6.6.2106 Unfair discrimination on the basis of blindness.

Case Notes

Preemption — State HIPAA and Unfair Trade Practices Act Claims: Plaintiff insureds claimed that the defendant insurer's premium increases violated Montana's Unfair Trade Practices Act, specifically 33-18-206, and 33-22-526, Montana's "little HIPAA" law. The federal District Court denied the plaintiffs' motion to remand to state court and granted the defendant summary judgment on both claims. On appeal, the Ninth Circuit Court of Appeals held that the state unfair insurance practices law was not preempted by federal law because it creates a separate right that cannot be remedied under federal law, but that federal HIPAA law preempted the Montana HIPAA law, both jurisdictionally and on the merits, because Montana's HIPAA provision is identical to and expressly relies on federal law. Fossen v. Blue Cross & Blue Shield of Mont., 660 F3d 1102 (9th Cir. 2011).

33-18-208. Contract to contain agreements — rebates prohibited — life, disability, and annuity contracts.

Case Notes

Unfair Trade Practices Act Does Not Provide Private Right of Action to Seek Enforcement of Act: The plaintiff owned and operated a medical clinic and purchased health insurance for its employees. The plaintiff filed a complaint alleging violations of the Unfair Trade Practices Act by charging excessive premiums and using the excess to pay kickbacks. The Supreme Court held that while a party may always allege and recover damages in a common law cause of action upon proof of a common law claim, a party is not entitled to obtain private enforcement of a regulatory statute that is not intended by the Legislature to be enforceable by private parties. Ibsen v. Caring for Montanans, Inc., 2016 MT 111, 383 Mont. 346, 371 P.3d 446. See also Somers v. Cherry Creek Dev., Inc., & RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281.

33-18-210. Unfair discrimination and rebates prohibited for title, property, casualty, or surety insurance — exceptions — limitations.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 129 in (11)(a) near end of first sentence after "in an individual's" inserted "claims history and" and at end of second sentence after "an insured's claims history" deleted "that is 3 years old or older"; in (11)(b) near beginning of first sentence after "An insurer may not" deleted "use more than the most recent 5 years of loss experience that is available when determining whether to", at end of first sentence inserted "based solely on adverse information contained in the loss experience or an insured's driving records that is 5 years old or older", and at end of second sentence after "an insured's claims history" deleted "that is 5 years old or older"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 174 inserted (11)(c) prohibiting certain actions by an insurer under a personal homeowner policy based solely on adverse information that is 7 years old or older and authorizing discounts based on favorable aspects of a claims history; inserted (11)(e) providing definition of personal homeowner policy; and made minor changes in style. Amendment effective October 1, 2021.

Saving Clause: Section 3, Ch. 129, L. 2021, was a saving clause.

Section 3, Ch. 174, L. 2021, was a saving clause.

2017 Amendment: Chapter 178 inserted (13) requiring an insurer providing personal lines insurance to not consider any claims by the insured that did not result in payment, excluding from this requirement claims that were the basis for criminal or civil insurance fraud actions, and providing a definition of personal lines insurance. Amendment effective October 1, 2017.

2015 Amendments — Composite Section: Chapter 98 in (1) and (2) inserted exception clause; inserted (4) concerning exceptions for United States armed forces; and made minor changes in style. Amendment effective March 20, 2015.

Chapter 304 in (1) and (2) at beginning inserted exception clause; inserted (3) concerning exception for benefit provided by telematics agreement; and made minor changes in style. Amendment effective October 1, 2015.

Applicability: Section 9, Ch. 304, L. 2015, provided: "[This act] applies to telematics agreements entered into or renewed on or after January 1, 2016."

2011 Amendment: Chapter 239 in (9)(a) in two places inserted "under a private passenger automobile policy" and in first sentence substituted "an individual's driving record" for "a driving record"; inserted (9)(b) relating to 5 most recent years of loss experience; inserted (9)(c) defining private passenger automobile policy; and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendment: Chapter 363 deleted former (11) that read: "(11) (a) For the purposes of this subsection (11), "credit history" means that portion of a credit report or background report that addresses the applicant's or insured's debt payment history or lack of history but does not include public information including convictions, lawsuits, bankruptcies, or similar public information.

(b) An insurer writing automobile or homeowner insurance may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the scope or amount of coverage or benefits available to an individual based solely on the insurer's knowledge of the individual's credit history unless:

(i) the insurer possesses substantial documentation that credit history is significantly correlated with the types of risks insured or to be insured;

(ii) the insurer sends written communication to the individual disclosing that the insurance coverage was declined, not renewed, or limited in scope or amount of coverage or benefits because of credit information relating to the applicant or the insured; and

(iii) upon subsequent request of the individual, mailed within 10 days of receipt of the denial, nonrenewal, or limitation, the insurer provides the individual with a copy of the credit report at issue or the name and address of a third party from whom the individual may obtain a copy of the credit report, within 10 days of receipt of the request.

(c) The provisions of this subsection (11) are not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act applicable to lending institutions, credit bureaus, or other credit service organizations that maintain or distribute credit histories on insurance applicants or policyholders"; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 14, Ch. 363, L. 2005, was a severability clause.

Applicability: Section 15, Ch. 363, L. 2005, provided: "[This act] applies to personal insurance policies written to be effective or renewed on or after October 1, 2005."

1995 Amendments — Composite Section: Chapter 320 inserted last sentence in (9) authorizing an insurer to provide discounts to insured based on favorable aspects of claims history; and made minor changes in style.

Chapter 427 inserted (11) defining credit history, prohibiting insurer from denying, canceling, failing to renew, charging higher rates, or limiting coverage or benefits on automobile and home owner insurance policies based solely on credit history unless history correlated with insured risks, unless insurer communicates with individual in writing disclosing coverage change, and unless individual requests and receives copy of credit report, and making subsection inapplicable to other state or federal disclosure provisions of lending institutions, credit bureaus, or credit service organizations maintaining and distributing credit histories on insurance applicants or policyholders; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1991 Amendments: Chapter 699 inserted (9) prohibiting denial of coverage and rate increases based solely on adverse information contained in a driving record that is 3 years old or older;

inserted (10) prohibiting charging of points or surcharging if the insured was not at fault; and made minor changes in style.

Chapter 798 in (1), after "insurance producer", deleted "or solicitor"; in (4), after "insurance producers", deleted "or solicitors"; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1981 Amendment: Inserted (5) prohibiting discrimination based on geographic location; inserted (6) prohibiting discrimination based on age of residential property; inserted (7) prohibiting discrimination based on marital status; and inserted (8) prohibiting discrimination based on mental or physical impairment.

Administrative Rules

ARM 6.6.2104 Jurisdiction and applicability date.

ARM 6.6.2106 Unfair discrimination on the basis of blindness.

ARM 6.6.3301 through 6.6.3304 Prohibiting unfair discrimination for previously uninsured personal automobile insurance applicants.

Case Notes

Pro Rata Clause Discriminatory: Where insured was charged the same premium as another insured who carried no other crop insurance but the benefits payable to him would be only a part of those payable to another insured without other crop insurance under policy's pro rata clause, it was proper for the District Court to find the pro rata clause a violation of the unfair discrimination statute and unlawful because a "full risk" premium was paid and only a partial recovery was possible due to the pro rata clause. McCarter v. Glacier Gen. Assurance Co., 169 M 269, 546 P2d 249 (1976). See also Musselman v. Mtn. W. Farm Bureau Mut. Ins. Co., 251 M 262, 824 P2d 271, 49 St. Rep. 50 (1992), in which it was held that the District Court did not err in failing to enforce a pro rata clause in a fire insurance policy when two separate individuals were insuring two entirely different interests in the same property.

Rebate of Commission: A fire insurance solicitor (now producer) who, pursuant to an agreement with an agent of the owner of a business block, paid over to the agent two-thirds of the commission earned by him in writing the insurance upon such block was guilty of "rebating" under section 40-1327, R.C.M. 1947 (since repealed). Smith v. Kleinschmidt, 57 M 237, 187 P 894 (1920).

33-18-211. Stock operations and advisory board contracts.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-18-212. Illegal dealing in premiums — improper charges for insurance.

Compiler's Comments

2017 Amendment: Chapter 396 deleted former (4) that read: "(4) Each violation of this section is punishable under 33-1-104." Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2015 Amendment: Chapter 223 inserted (3) regarding flat fees charged as specified in 33-2-320; and made minor changes in style. Amendment effective July 1, 2015.

Applicability: Section 6, Ch. 223, L. 2015, provided: "[This act] applies to surplus lines insurance transactions on or after July 1, 2015."

1995 Amendment: Chapter 379 in (2), in first sentence in two places before "approved", substituted "or" for "and"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1989 Amendments: Chapter 613 deleted fourth and fifth sentences of (2) that provided subsection does not prohibit collection from insured of placement fee, not to exceed 7½% of annual premium, for placement through state compensation insurance fund by licensed agent and that placement fee is not premium as defined in 33-15-102; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

Chapter 713 substituted references to surplus lines insurance producer for references to surplus lines agent and references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: In (2), near middle, substituted "lines" for "line".

Case Notes

Unfair Trade Practices Act Does Not Provide Private Right of Action to Seek Enforcement of Act: The plaintiff owned and operated a medical clinic and purchased health insurance for its employees. The plaintiff filed a complaint alleging violations of the Unfair Trade Practices Act by charging excessive premiums and using the excess to pay kickbacks. The Supreme Court held that while a party may always allege and recover damages in a common law cause of action upon proof of a common law claim, a party is not entitled to obtain private enforcement of a regulatory statute that is not intended by the Legislature to be enforceable by private parties. Ibsen v. Caring for Montanans, Inc., 2016 MT 111, 383 Mont. 346, 371 P.3d 446. See also Somers v. Cherry Creek Dev., Inc., & RJC Inv., Inc., 2019 MT 101, 395 Mont. 389, 439 P.3d 1281.

Binder Coverage Received but No Policy Issued — No Statutory Violation: Agent Currie collected a sum from McNeil as a premium that he submitted to the insurer. McNeil received binder coverage for two brief periods but did not receive a policy because the insurer subsequently declined to accept the risk based on McNeil's short time in business and low credit rating. These facts did not support a violation of this section. McNeil v. Currie, 253 M 9, 830 P2d 1241, 49 St. Rep. 312 (1992).

33-18-213. Extension of credit to policyholder.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-18-215. Postclaim underwriting prohibited — condition.

Case Notes

Admission of Medical Records to Determine Whether Material Misrepresentation Made on Application — No Prejudice: When applying for credit life insurance, plaintiff's husband, Clarence, indicated that he was in good health. Less than 1 year later, Clarence died, and plaintiff submitted an insurance claim, but the claim was denied and the policy was rescinded, so plaintiff sued. At trial, the District Court admitted Clarence's medical records. Plaintiff argued that the records were allowed without foundation showing that the records existed when Clarence applied for the insurance or that the records were relied on by the parties. The court concluded that it was for the jury to decide whether Clarence made a material misrepresentation that would justify defendant's action in denying the claim and rescinding the policy. The Supreme Court affirmed, holding that the District Court did not act arbitrarily or exceed the bounds of reason in admitting the records for jury inspection and that plaintiff failed to identify any prejudicial information in the records or show how introduction of the records harmed the case. Williams v. Union Fidelity Life Ins. Co., 2005 MT 273, 329 M 158, 123 P3d 213 (2005). See also Lopez v. Josephson, 2001 MT 133, 305 M 446, 30 P3d 326 (2001).

Evidence Related to Plaintiff's Bankruptcy Properly Precluded From Trial Regarding Plaintiff's Purchase of Credit Life Insurance: When Clarence and Barbara purchased a vehicle, the dealer offered credit life insurance as part of the transaction. Clarence died within 1 year of the purchase, but the insurer denied a life insurance claim and rescinded the policy. Barbara sued the insurer for fraud and bad faith. At trial, defendant sought to introduce evidence regarding plaintiff's bankruptcy, but the trial court granted Barbara's motion in limine excluding the bankruptcy evidence, and defendant appealed. The Supreme Court found no evidence that the trial court acted arbitrarily or exceeded the bounds of reason in granting the motion in limine, and the trial court was affirmed. Williams v. Union Fidelity Life Ins. Co., 2005 MT 273, 329 M 158, 123 P3d 213 (2005). See also Lopez v. Josephson, 2001 MT 133, 305 M 446, 30 P3d 326 (2001).

Inapplicability of Filed Rate Doctrine to Claim of Violation of State Law Regarding Credit Life Insurance: Plaintiff asserted that defendant's credit life insurance application was ambiguous, entitling plaintiff to judgment as a matter of law when defendant rejected plaintiff's claim for benefits and rescinded plaintiff's certificate of insurance. Defendant claimed that any ruling that plaintiff was entitled to judgment as a matter of law based solely on the application form would violate the filed rate doctrine set out in Keogh v. Chicago & NW. Ry. Co., 260 US 156 (1922). The doctrine arose from a concern that deviation from a rate filed with a federal regulatory agency can result in imposition of civil or criminal sanctions by a court without sufficient knowledge or expertise in the ratesetting process of a regulatory agency, and the purpose of the doctrine is to ensure that rates are reasonable and evenly applied. The doctrine initially applied to common carriers but was later applied to insurance. The Montana Commissioner of Insurance asserted that the doctrine has not been extended to include insurance forms approved by a state agency and that the state's regulatory authority does not preclude a claim against an insurer for a violation of state law. The Supreme Court agreed. The filed rate doctrine did not apply in this case because there was no evidence that defendant's rates were set, reviewed, or filed by a federal regulatory agency, so defendant was not immunized under the doctrine for a violation of state law. Nevertheless, plaintiff was not entitled to summary judgment because a material question of fact remained as to whether plaintiff's husband misrepresented his health when filling out the application and, if so, whether the misrepresentation was material. Additionally, judgment as a matter of law was not appropriate because there was sufficient evidence to submit the issues to the jury. Williams v. Union Fidelity Life Ins. Co., 2005 MT 273, 329 M 158, 123 P3d 213 (2005).

33-18-216. Unfair discrimination against victims of abuse prohibited.

Compiler's Comments

Saving Clause: Section 3, Ch. 304, L. 1997, was a saving clause.

Severability: Section 4, Ch. 304, L. 1997, was a severability clause.

33-18-217. Military discount exception to rebate and discount prohibition for property or casualty insurance.

Compiler's Comments

Effective Date: Section 4, Ch. 98, L. 2015, provided that this section is effective on passage and approval. Approved March 20, 2015.

33-18-218. Insurer costs prohibited — duty to defend — exception.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Codification Change: Section 3, Ch. 419, L. 2023, provided that this section was to be codified as an integral part of Title 33, chapter 18, part 1. The Code Commissioner has codified this section in Title 33, chapter 18, part 2, to more closely reflect the subject matter.

Preamble: The preamble attached to Ch. 419, L. 2023, provided: "WHEREAS, in Travelers Casualty and Surety Company v. Ribi Immunochem Research, 2005 MT 50, 326 Mont. 174, 108 P.3d 469, the Montana Supreme Court held that an insurer may recover defense costs when the insurer did not have a duty to defend any of the asserted claims; and

WHEREAS, in subsequent cases, including Horace Mann Insurance Company v. Hanke, 2013 MT 320, 372 Mont. 350, 312 P.3d 429, the Montana Supreme Court affirmed its decision to allow an insurer to recover defense costs when the insurer was determined to have no duty to defend an insured.

THEREFORE, this act generally prohibits insurers from recovering costs in an action for which the insurer has been found to not owe a duty to defend, but also provides an exception for actions in which certain conditions are met."

33-18-219. Exceptions to applicability.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Codification Change: Section 3, Ch. 419, L. 2023, provided that this section was to be codified as an integral part of Title 33, chapter 18, part 1. The Code Commissioner has codified this section in Title 33, chapter 18, part 2, to more closely reflect the subject matter.

Preamble: The preamble attached to Ch. 419, L. 2023, provided: "WHEREAS, in Travelers Casualty and Surety Company v. Ribi Immunochem Research, 2005 MT 50, 326 Mont. 174, 108 P.3d 469, the Montana Supreme Court held that an insurer may recover defense costs when the insurer did not have a duty to defend any of the asserted claims; and

WHEREAS, in subsequent cases, including Horace Mann Insurance Company v. Hanke, 2013 MT 320, 372 Mont. 350, 312 P.3d 429, the Montana Supreme Court affirmed its decision to allow an insurer to recover defense costs when the insurer was determined to have no duty to defend an insured.

THEREFORE, this act generally prohibits insurers from recovering costs in an action for which the insurer has been found to not owe a duty to defend, but also provides an exception for actions in which certain conditions are met."

33-18-221. Designation of specific repair shops prohibited — lists allowed.

Compiler's Comments

2009 Amendment: Chapter 192 in (3) before "market price" deleted "lowest prevailing". Amendment effective April 9, 2009.

2001 Amendment: Chapter 345 in (3) before "prevailing" inserted "lowest"; deleted former (5) that read: "(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service"; and made minor changes in style. Amendment effective April 21, 2001.

Severability: Section 7, Ch. 345, L. 2001, was a severability clause.

Retroactive Applicability: Section 9, Ch. 345, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to October 1, 1999."

1999 Amendment: Chapter 526 in (3) before "prevailing" deleted "lowest"; and inserted (5) pertaining to charges for services for insured versus uninsured customers. Amendment effective October 1, 1999.

Severability: Section 7, Ch. 526, L. 1999, was a severability clause.

Effective Date: Section 7, Ch. 554, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

33-18-222. Market price.

Compiler's Comments

2009 Amendment: Chapter 192 in (1) in introductory clause after "33-18-223" inserted "and 33-18-224" and changed definition from lowest prevailing market price to market price; inserted (1)(a) and (1)(b) defining market price; in (2) before "market price" deleted "lowest prevailing"; and made minor changes in style. Amendment effective April 9, 2009.

2001 Amendment: Chapter 345 in first sentence after "33-18-223" deleted reference to 33-18-224 and substituted definition of lowest prevailing market price for former definition of prevailing market price that read: ""prevailing market price" means the lowest competitive and generally accepted market price in a local area" and in second sentence near beginning inserted "lowest"; and made minor changes in style. Amendment effective April 21, 2001.

Severability: Section 7, Ch. 345, L. 2001, was a severability clause.

Retroactive Applicability: Section 9, Ch. 345, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to October 1, 1999."

1999 Amendment: Chapter 526 in first and second sentences before "prevailing" deleted "lowest"; in first sentence after "33-18-223" inserted "and 33-18-224" and after "lowest" inserted "competitive and generally accepted"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 7, Ch. 526, L. 1999, was a severability clause.

Effective Date: Section 7, Ch. 554, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

33-18-223. Prohibited activities — glass broker defined.

Compiler's Comments

2009 Amendment: Chapter 192 in (1)(c) near end before "market price" deleted "lowest prevailing". Amendment effective April 9, 2009.

2001 Amendment: Chapter 345 in (1)(c) before "prevailing" inserted "lowest"; deleted former (1)(d) and (1)(e) that read: "(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or

(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business"; in (2) at end after "work" deleted "or that installs or manufactures glass or provides glass for installation"; and made minor changes in style. Amendment effective April 21, 2001.

Severability: Section 7, Ch. 345, L. 2001, was a severability clause.

Retroactive Applicability: Section 9, Ch. 345, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to October 1, 1999."

1999 Amendment: Chapter 526 in (1)(c) before "prevailing" deleted "lowest"; inserted (1)(d) pertaining to the establishment of an agreement for the processing of claims or bills; inserted (1)(e) pertaining to sharing information with a glass manufacturing, replacement, or repair entity; at end of (2) inserted "or that installs or manufactures glass or provides glass for installation"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 7, Ch. 526, L. 1999, was a severability clause.

1997 Amendment: Chapter 207 in (1)(b), in two places, substituted references to glass broker for "person"; and made minor changes in style.

Effective Date: Section 7, Ch. 554, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

33-18-224. Designation of specific automobile body repair businesses prohibited.

Compiler's Comments

2011 Amendment: Chapter 290 inserted (1)(a)(iii) regarding unilateral disregard of repair operation or cost; and made minor changes in style. Amendment effective April 28, 2011.

2009 Amendment: Chapter 192 in (2)(c)(iii) before "market price" deleted "prevailing competitive"; and in (4) in second sentence before "market price" deleted "lowest prevailing". Amendment effective April 9, 2009.

2007 Amendment: Chapter 339 throughout section substituted references to claimant for references to person insured or insured person; in (1)(a)(i) after "location" inserted "for an estimate or a repair"; inserted (1)(b) allowing insurance company, including company's producers and adjusters, that issues or renews policy covering motor vehicle to have access to vehicle to prepare competitive estimate; inserted (8)(b) defining claimant; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 407 in (1)(a) and (1)(b) after "automobile" inserted "body"; substituted (2) and (3) prohibiting insurance companies with direct repair programs from limiting the number of businesses with whom the company maintains direct repair programs for former (2) that read: "(2) For the purposes of this section, an incentive or inducement does not include:

(a) providing an insured person or a customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or customer that offer a warranty for the automobile repair services provided by the businesses or locations;

(b) providing an insured person or a customer with a list of particular body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile repair business or location"; in (4) near beginning after "use" substituted "an automobile body repair" for "a"; deleted former (4) that read: "(4) If the insured person uses an automobile repair business or location not on a list provided under subsection (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use"; inserted (5) providing that an insurance company is not liable if an insured uses an automobile body repair business that is not on a list; in (6) in two places after "automobile" and in (8) after first "automobile" inserted "body"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 345 in (1) substituted "its producers" for "its employees"; in (1)(a) after "require" deleted "or encourage" and after "insured" deleted "or a claimant"; in (1)(b) in two places after "person" deleted "or a claimant"; deleted former (1)(c) and (1)(d) that read: "(c) except as provided in subsection (2):

(i) suggest the use of a particular automobile repair business or location;

(ii) mention or provide the name of a particular automobile repair business or location;

(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or

(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business; or

(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant"; deleted former (2) that read: "(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and

(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:

(i) write automobile insurance for primarily one insurer; or

(ii) are contractually obligated to use one automobile insurer before using other insurers"; at beginning of (2) substituted "For the purposes of this section, an incentive or inducement does not include" for "An insurer may"; in two places in (2)(a) and in (2)(b) substituted "customer" for "claimant"; in (2)(b) after "particular" substituted "body shops meeting" for "automobile repair businesses or locations that are reasonably close to the insured person or claimant that meet" and after "safety" inserted "when the list is requested by the insured person or customer"; inserted (2)(c) providing that incentive or inducement does not include referring to a warranty issued by an automobile repair business or location; deleted former (4) through (6) that read: "(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:

(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.

(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.

(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list"; in (3) in first sentence after "insured's" deleted "or claimant's", in first and second sentence after "automobile" inserted "body", in second sentence before "prevailing" inserted "lowest", and deleted former last sentence that read: "An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection"; in (4) after "person" deleted "or claimant"; at end of (6) after "section" deleted "unless the independent adjuster is clearly acting at the direction of the insurance company"; and made minor changes in style. Amendment effective April 21, 2001.

Severability: Section 7, Ch. 345, L. 2001, was a severability clause.

Retroactive Applicability: Section 9, Ch. 345, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to October 1, 1999."

1999 Amendment: Chapter 526 in (1) in introductory clause after "including its" substituted "employees" for "producers"; in (1)(a) inserted "or encourage" and inserted "or a claimant"; in (1)(b) in two places inserted "or a claimant"; inserted (1)(c) prohibiting mentioning or suggesting or directing the use of a particular automobile repair business; inserted (1)(d) prohibiting having producers direct the use of a particular automobile repair business; inserted (2) designating how provisions of subsection (1) apply to insurance producers; inserted language in (3) allowing for the provision of certain information by an insurer for former (3) that read: "(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing an insured person or a customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or customer that offer a warranty for the automobile repair services provided by the businesses or locations;

(b) providing an insured person or a customer with a list of particular body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile repair business or location"; inserted (4) establishing requirements for an insurer providing a list of repair facilities to insureds; inserted (5) providing for the submission of complaints to the insurance commissioner; inserted (6) prohibiting certain actions by an insurer when distributing an automobile repair facility list to an insured; in (7) in first sentence inserted "or claimant's", in second and third sentences after "automobile" deleted "body", in third sentence before "prevailing" deleted "lowest", and inserted fourth sentence requiring insurer to inform insured of certain rights; in (8) near beginning inserted "or claimant"; in (10) at end inserted "unless the independent adjuster is clearly acting at the direction of the insurance company"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 7, Ch. 526, L. 1999, was a severability clause.

Effective Date: Section 3, Ch. 292, L. 1997, provided that this section is effective April 18, 1997.

33-18-225. Designation of specific car rental business prohibited.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

33-18-231. State administrative process to provide timely payment of medical benefits — definitions.

Compiler's Comments

2003 Amendment: Chapter 378 inserted definition of claim documentation; in definition of proof of loss after "any" substituted "claim documentation received" for "document accepted" and after "payment of" substituted "claims is requested" for "benefits is made"; and made minor changes in style. Amendment effective October 1, 2003.

33-18-232. Time for payment of claims.

Compiler's Comments

2005 Amendment: Chapter 469 in (2) inserted third sentence providing that interest is payable under subsection (2) only if the amount of interest due on a claim exceeds $5. Amendment effective October 1, 2005.

2003 Amendment: Chapter 378 in (1) substituted first sentence requiring payment or denial of claim within 30 days unless there is a reasonable request for additional information for former first sentence that read: "If within 30 days after receipt of a proof of loss, the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason and, if so, whether such delay is a general course of business practice of the insurer" and inserted remainder of subsection providing for payment in 60 days unless fraud is suspected and clarifying insurer's right to conduct thorough investigation; substituted (2) requiring payment of interest by insurer that fails to make prompt payment of claims for former (2) that read: "(2) Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, shall obligate the insurer to pay interest at 18% a year from the date the commissioner determines that the delay became unreasonable"; and inserted (3) providing that compliance or noncompliance with prompt payment requirements may not be used as basis for private cause of action or as evidence in private action. Amendment effective October 1, 2003.

Administrative Rules

ARM 6.6.1701 Defining general business practice or general course of business practice.

33-18-233. Administrative penalty for failure to pay promptly.

Compiler's Comments

2003 Amendment: Chapter 378 in (1) after "fine as" substituted reference to 33-1-317 for "set forth in subsection (2)"; inserted (1)(e) relating to payment of interest; deleted former (2) that read: "(2) The administrative penalty imposed for violations of 33-18-231 through 33-18-235 may not exceed $1,000 for each separate violation"; in (2) after "total" inserted "dollar", after "claims" inserted "to each claimant", and at end after "fine" substituted "described in subsection (1)" for "imposed under subsection (2)"; and made minor changes in style. Amendment effective October 1, 2003.

33-18-235. Rulemaking authority.

Compiler's Comments

2007 Amendment: Chapter 399 near beginning substituted "may adopt" for "shall make". Amendment effective May 3, 2007.

Statement of Intent: The statement of intent attached to HB 638 (Ch. 300, L. 1983) provided: "A statement of intent is required for [House Bill 638] because it gives rulemaking power to the commissioner of insurance. In section 5, the commissioner is authorized to establish rules to determine if a health or medical insurer is meeting his contractual obligation in a timely manner, to provide for administrative penalties against insurers who fail to fulfill those obligations, and to make the determinations necessary for insured persons whose benefit payments are unnecessarily delayed to be eligible to collect interest on the late payments."

Administrative Rules

ARM 6.6.1701 Defining general business practice or general course of business practice.

33-18-242. Independent cause of action — burden of proof.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 356, L. 2023, in (9) substituted current text concerning definition of "insurer" for former (8) that read: "(8) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them." Amendment effective October 1, 2023.

Section 2, Ch. 430, L. 2023, inserted (4) relating to third-party claimants bringing an action for fraud; and made minor changes in style. Amendment effective May 4, 2023.

Preamble: The preamble attached to Ch. 430, L. 2023, provided: "WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim."

Saving Clause: Section 4, Ch. 430, L. 2023, was a saving clause.

Applicability: Section 6, Ch. 278, L. 1987, provided: "This act applies to causes of action arising after the effective date of this act." Effective July 1, 1987.

Case Notes

General 438
Duty to Settle 448

GENERAL

Unfair Trade Practices Act Standards — District Court Did Not Abuse Discretion for Refusal to Allow Evidence of Other Settlement Amounts Paid by Insurer — Reasonable Basis for Adjustor Disputing Causation and Severity of Injuries. Humes v. Farmers Ins. Exch., 2022 MT 148, 409 Mont. 295, 514 P.3d 417.

Employee's Bad Faith Conduct Claims Against Railroad Not Preempted by Federal Employers' Liability Act: The plaintiff sustained on-the-job injuries while working for a railroad. He filed a claim under the Federal Employers' Liability Act of 1908 (FELA) and won at trial. The next year, he filed claims in District Court for bad faith and punitive damages against the railroad, relying on the Uniform Trade Practices Act and common law. The railroad argued that the claims were preempted by FELA. The District Court held that the claims were not precluded, and the plaintiff prevailed on a stipulated motion for entry of judgment, with the railroad reserving the right to appeal. On appeal, the Supreme Court affirmed, addressing the railroad's arguments regarding express preemption, field preemption, and conflict preemption and concluding that the plaintiff's bad faith claims were not preempted under any theory of preemption. Dannels v. BNSF Ry. Co., 2021 MT 71, 403 Mont. 437, 483 P.3d 495.

Stipulated Settlement — Covenant Not to Execute on Defendant — Order Approving Settlement Based on Erroneous Finding Insurer Had Abandoned Its Insured Reversed: The plaintiff brought claims against an accounting firm seeking damages related to tax advice on a 1031 exchange. The accounting firm's insurer provided defense counsel; however, it reserved its right to challenge coverage for some of the claims and later refused to settle the claim for policy limits. The accounting firm independently entered into a stipulation with the plaintiff and agreed to a $10 million settlement with a covenant not to execute against the accounting firm. The insurer moved to intervene, arguing that it had not breached its duty to defend the case by not agreeing to pay policy limits. It also argued that the settlement amount was not reasonable. The District Court held that the insurer had abandoned the accounting firm and found the settlement reasonable. On appeal, the Supreme Court reversed, holding that the District Court improperly held that the insurer had abandoned the accounting firm because it had provided a defense throughout the proceedings. The court also concluded that the amount of the damages could not be considered fair and reasonable and accordingly reversed and remanded the case. Draggin' Y Cattle Co., Inc. v. Junkermier, 2019 MT 97, 395 Mont. 316, 439 P.3d 935.

Unfair Trade Practices Act Claim Concerning Settlement — Plea for Motion to Dismiss Sufficient: Taking the plaintiff's complaint as true for purposes of a motion to dismiss, the District Court erred by concluding that the plaintiff did not sufficiently plead a claim under the Unfair Trade Practices Act for which relief may be granted. The District Court failed by determining whether the defendants, two insurance companies, acted reasonably absent a determination that the defendants' reasonable basis was solely grounded on a legal conclusion and no issues of fact remained in dispute. Even if the defendants had a reasonable basis to apply the collateral source statute, the District Court failed to consider the plain language of the collateral source statute and whether it was applicable in the plaintiff's case. Marshall v. Safeco Ins. Co., 2018 MT 45, 390 Mont. 358, 413 P.3d 828, distinguishing Miller v. St. Farm Mut. Auto. Ins. Co., 2007 MT 85, 337 Mont. 67, 155 P.3d 1278.

Damages Under Breach of Contract Claims Considered Compensatory Damages Under Unfair Trade Practices Act for Pursuit of Punitive Damages: In an insurance dispute in which plaintiffs sued the defendant insurer to contest the denial of untimely filed claims, the District Court erred in instructing the jury that it must first find Unfair Trade Practices Act (UTPA) damages beyond the breach of insurance contract damages in order to consider malice and punitive damages under the UTPA. When an insurer is found to have violated the UTPA, damages due to the breach of insurance contract may constitute compensatory UTPA damages sufficient to present the question of malice and punitive damages to the jury. Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

Notice-Prejudice Rule Applicable in First-Party Insurance Coverage: The notice-prejudice rule applies to first-party insurance coverage disputes. Under this rule, an insurer may deny coverage based on an insured's failure to comply with a policy notice provision only if the insurer can demonstrate that it was prejudiced by the late notice. Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

Reasonable Basis in Law for Denial — No Application to Claim for Breach of Contract: The conservator for a baby girl who had suffered minor injuries in a car accident that killed her father demanded payment for her claims. The insurer denied the claims based on its belief that it had already paid out the maximum coverage under the policy. However, in St. Farm Mut. Auto. Ins. Co. v. Freyer (Freyer I), 2010 MT 191, 357 Mont. 329, 239 P.3d 143, the Supreme Court concluded that the insurer owed the daughter for her claims. Following the Supreme Court's decision, the conservator filed new claims against the insurer, including a claim for breach of the insurance contract. The insurer argued that it had a reasonable basis in law for denying the daughter's claims. Applying this rationale, the District Court granted summary judgment in favor of the insurer. On appeal, the Supreme Court concluded that while the "reasonable basis in law" defense applies to bad faith claims, it does not apply to a breach of contract claim. The court reversed and remanded the case to the District Court to determine the proper measure of damages related to the breach of contract. St. Farm Mut. Auto. Ins. Co. v. Freyer, 2013 MT 301, 372 Mont. 191, 312 P.3d 403.

Action for Residual Diminished Value — Lack of Standing Under UDJA: The plaintiff, individually and on behalf of a class, sought residual diminished value damages — the difference between the value of a vehicle immediately before an accident and the value of the vehicle after postaccident repairs have been made — under the Uniform Declaratory Judgments Act (UDJA). The Supreme Court concluded the District Court erred in granting class certification. Because residual diminished value does not qualify as a type of damage that must be paid in advance as "not reasonably in dispute", the plaintiff was barred from seeking damages under the UDJA without first meeting the requirements of 33-18-242. Since the plaintiff had not satisfied the 33-18-242 requirements, he lacked individual standing to raise his claim and, therefore, lacked the requisite typicality to raise a claim on behalf of the class. Hop v. Safeco Ins. Co., 2011 MT 215, 361 Mont. 510, 261 P.3d 981.

No Relationship Between Parties — No Violation of Unfair Trade Practices Act — Summary Judgment Appropriate: The estate of a man who was severely injured in a car accident claimed that a Medicaid eligibility company located in a hospital violated the Montana Unfair Trade Practices and Consumer Protection Act (UTPA) when the hospital later billed the patient directly instead of first billing Medicaid for its services. The Supreme Court affirmed the District Court's grant of summary judgment in favor of the company because there was no relationship between the parties that supported a claim under the UTPA, given that the mother of the man had only one conversation with an employee of the company, the estate was never a client of the company, and there was no contract between the parties. Estate of Donald v. Kalispell Regional Medical Center, 2011 MT 166, 361 Mont. 179, 258 P.3d 395.

No Error in Refusing Jury Instruction on UTPA Facts No Longer at Issue: Defendant insurer offered a jury instruction regarding defendant's liability under the Montana Unfair Trade Practices Act (UTPA), but the District Court declined to give the instruction. On appeal, the Supreme Court noted that the District Court had earlier granted summary judgment in defendant's favor on the issue of UTPA liability, so defendant's proposed instruction was rendered irrelevant. Jacobsen v. Allstate Ins. Co., 2009 MT 248, 351 M 464, 215 P3d 649 (2009).

Claim for Emotional Distress as Part of Unfair Trade Practices Violation — Sacco Standard Inapplicable: As part of their suit for defendant's alleged unfair trade practices, plaintiffs claimed damages for emotional distress. Defendant asserted that the claims should be dismissed because plaintiffs failed to demonstrate serious or severe emotional distress as required in Sacco v. High Country Independent Press, Inc., 271 M 209, 896 P2d 411 (1995). The Supreme Court disagreed. The Sacco heightened standard of proof applies to independent, stand-alone tort claims for negligent or intentional infliction of emotional distress, not to cases alleging emotional distress as an element of damages resulting from unfair trade practices violations or torts generally. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008), following Vortex Fishing Sys., Inc. v. Foss, 2001 MT 312, 308 M 8, 38 P3d 836 (2001).

Insurer's Liability for Misrepresentation of Policy Provisions: Plaintiffs submitted a claim for medical expenses, and even though the insurer had paid similar claims on several prior occasions under the same policy, the insurer denied the claim, so plaintiffs sued for misrepresentation of the policy provisions. The District Court granted the insurer's motion for summary judgment on grounds that: (1) there was no intent by the insurer to misrepresent the policy coverage; (2) the insurer refuted any alleged intent to misrepresent by paying the claim after the misrepresentation occurred; and (3) plaintiffs' claim was not actionable because plaintiffs knew that the statement denying coverage was false. On appeal, the Supreme Court rejected the insurer's arguments. First, 33-18-201 does not distinguish between intentional and unintentional misrepresentation, but rather prohibits misrepresentation categorically, so the issue of whether an insurer intended to misrepresent policy provisions is not a factor. Second, an insurer's conduct after a misrepresentation has no connection to whether a misrepresentation actually occurred. Third, 33-18-201 contains no exceptions for misrepresentations made to claimants who accurately comprehend the meaning of a policy. Rather, the statute is intended to protect all claimants, regardless of their level of knowledge regarding the policy, so a claimant's knowledge regarding the veracity of the insurer's statement concerning policy coverage is irrelevant in determining whether a misrepresentation occurred. Therefore, the District Court erred in granting the insurer's summary judgment motion on the misrepresentation claim. Lorang v. Fortis Ins. Co., 2008 MT 252, 345 M 12, 192 P3d 186 (2008).

In McVey v. USAA Cas. Ins. Co., 2013 MT 346, 372 Mont. 511, 313 P.3d 191, the Supreme Court held that the fact that a claim is filed by someone other than the insured does not preclude the insured from invoking the protections of 33-18-201(4) and 33-18-242 and clarified that the reference in Lorang to a "claimant" did not intend to control the scope of the protections provided or otherwise bar an insured from pursuing a claim pursuant to these statutes.

Genuine Issue of Fact Regarding Unfair Trade Practices and Punitive Damages in Insurance Case — Summary Judgment Precluded: Following an auto accident, Shelton filed claims under her insurance policy for medical payments and underinsured motorist coverage. After several unsuccessful attempts at settlement, Shelton amended the complaint 4 years after the accident to add claims for punitive damages and bad faith. The parties agreed to bifurcate the punitive damages and bad faith claims from the underinsured motorist claim. Citing subsection (5) of this section, the insurer moved for summary judgment on the punitive damages and bad faith claims on grounds that the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim. The District Court found, with respect to the bad faith claim, that Shelton did not present any material fact that precluded summary judgment and, with regard to the punitive damages claim, that Shelton admitted that there was no factual basis for a claim of malice and that there was no evidence of fraudulent behavior by the insurer. Summary judgment was granted to the insurer, and Shelton appealed. The Supreme Court reversed. Shelton provided evidence tending to show that the insurer failed to collect necessary records and reports and failed to share the information among its own experts, neglected to attempt in good faith to effectuate a settlement, and may have acted with malice in failing to pay Shelton the minimum amount of money that it determined that Shelton deserved. These questions of material fact precluded summary judgment, and the case was remanded for further proceedings. Shelton v. St. Farm Mut. Auto. Ins. Co., 2007 MT 132, 337 M 378, 160 P3d 531 (2007).

Attorney Fees Not Recoverable Under Unfair Trade Practices Provisions: When plaintiffs were injured in a collision with a vehicle insured by defendant, they offered to settle their bodily injury claims for $125,000, but the insurer refused. After plaintiffs spent about $43,500 in attorney fees, the insurer settled for $125,000. Plaintiffs then sought to recover their attorney fees under the unfair trade practices provisions of this chapter, but summary judgment was granted to the insurer, so plaintiffs appealed. The Supreme Court affirmed. Although it could have done so, the Legislature did not construct the unfair trade practices provisions to specifically provide for the recovery of attorney fees. The court recognized the seeming unfairness of plaintiffs having to pay $43,500 to recover the same amount of money that they were willing to accept in the first place, but the court declined to construe the provisions to allow attorney fees to be considered as damages when the Legislature did not do so. Sampson v. Nat'l Farmers Union Property & Cas. Co., 2006 MT 241, 333 M 541, 144 P3d 797 (2006), distinguished in Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349.

Bad Faith Claim Related to Vague Credit Life Insurance Application Not Barred — Denial of Summary Judgment Proper: When Clarence and Barbara purchased a vehicle, the dealer offered credit life insurance as part of the transaction. Clarence died within 1 year of the purchase, but the insurer denied a life insurance claim and rescinded the policy. Barbara sued the insurer for fraud and bad faith. Defendant contended that because Barbara failed to establish the elements of fraud, defendant was entitled to judgment as a matter of law on the fraud issue and that because this section barred Barbara's bad faith claim, defendant was entitled to summary judgment on Barbara's claims. The District Court denied defendant's claims for judgment, and on appeal, the Supreme Court affirmed. Both of Barbara's claims were supported, and this section did not bar Barbara's bad faith claim that was related to defendant's vague application and not the defendant's handling of the claim. Questions of material fact remained, so summary judgment was not proper, and judgment as a matter of law was not appropriate because there was sufficient evidence to submit the issues to the jury. Williams v. Union Fidelity Life Ins. Co., 2005 MT 273, 329 M 158, 123 P3d 213 (2005).

Improper Assumption That Defense Verdict in Underlying Negligence Action Precludes Subsequent Unfair Trade Practices Claims — Reversible Error: Plaintiff was involved in an automobile accident when an employee of the Goosebill Ranch struck a vehicle driven by the Cloutiers and then struck plaintiff's vehicle, which was pushed across an intersection and collided with a truck that was proceeding through the intersection. Plaintiff sued Goosebill Ranch for negligence, but the jury returned a verdict for the ranch, and plaintiff appealed. The Cloutiers also sued Goosebill Ranch in a separate action, and in that case, the jury found that the ranch was negligent and awarded the damages to the Cloutiers. The damages were paid by the defendant insurance company. While appeal of plaintiff's negligence case was pending, plaintiff settled, and the judgment against plaintiff was released as part of the settlement, but plaintiff reserved the right to bring a bad faith action against that insurer. Plaintiff then brought an unfair trade practices claim against the insurers, asserting violation of this section and alleging claims for outrage or intentional infliction of severe emotional distress. The District Court held that the initial jury verdict for Goosebill Ranch provided the insurers with a reasonable basis defense to plaintiff's subsequent unfair trade practices claim and that plaintiff could not bring a statutory bad faith action claiming liability was reasonably clear when the jury had decided the opposite, so plaintiff's claim was dismissed. On appeal, the Supreme Court reversed. The District Court's assumption that the unfair trade practices claim sought to relitigate the underlying claim and that the issues in both claims were the same was incorrect because the issues were in fact separate. An unfair trade practices claim is considered an independent cause of action. The District Court's reasoning that an unfair trade practices claimant must first establish liability in an underlying claim and that an adverse jury verdict defeats the claim was also erroneous because under this section, a settlement of the underlying claim is sufficient to allow an unfair trade practices claim, and a defense verdict in the underlying negligence suit was not tantamount to a finding that the insurer did not engage in unfair trade practices. Further, a ruling that a defense verdict provided a reasonable basis defense to a subsequent unfair trade practices claim as a matter of law was also erroneous because insurers would then be encouraged to obtain defense verdicts at any cost to shield themselves from subsequent unfair trade practices claims. Thus, a defense verdict in the underlying negligence claim did not collaterally estop plaintiff from pursuing an unfair trade practices claim. Last, plaintiff's failure to raise the issue of insurer misconduct in a motion under former Rule 60(b), M.R.Civ.P. (now superseded), in the underlying negligence case did not preclude pursuit of an unfair trade practices claim because the unfair trade practices claims were not litigated in the underlying case and were not issues that should have been litigated in the negligence suit for personal injuries. Graf v. Cont. W. Ins. Co., 2004 MT 105, 321 M 65, 89 P3d 22 (2004). See also Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834 (2000), and Rausch v. Hogan, 2001 MT 123, 305 M 382, 28 P3d 460 (2001).

Limitation of Action — Workers' Compensation Third Party and Bad Faith Claims: A third-party claimant may not bring an action pursuant to Title 33, ch. 18, commonly known as the Unfair Trade Practices Act, until the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim. The statute of limitations on such a claim is

1 year from the date of settlement or entry of judgment on the underlying claim, even though the Act does not define what constitutes an underlying claim. A common-law bad faith claim accrues when: (1) all of the elements of the claim or cause exist or have occurred; (2) the right to maintain an action on the claim or cause is complete; or (3) a court or other agency is authorized to accept jurisdiction of the action. The statute of limitations for a common-law bad faith claim is 3 years and begins to run when the claim or action accrues. The accrual date of a bad faith claim arising out of a separate and independent disputed issue is established by determining whether that particular issue has been ultimately resolved, regardless of the existence or absence of a resolution of other issues within the workers' compensation case. Therefore, for statute of limitations purposes, statutory and common-law bad faith claims against an insurer that are predicated on actions taken in adjusting a workers' compensation claim accrue when the Workers' Compensation Court enters a judgment ordering the insurer to pay for a previously denied benefit but leaves unresolved the ultimate determinations of the extent and duration of the worker's disability. O'Connor v. Nat'l Union Fire Ins. Co., 2004 MT 65, 320 M 301, 87 P3d 454 (2004), following Grenz v. Orion Group, Inc., 243 M 486, 795 P2d 444 (1990), Poteat v. St. Paul Mercury Ins. Co., 277 M 117, 918 P2d 677 (1996), and Brewington v. Employers Fire Ins. Co., 1999 MT 312, 297 M 243, 992 P2d 237 (1999), and distinguishing Fode v. Farmers Ins. Exch., 221 M 282, 719 P2d 414 (1986).

Unfair Trade Practices Act Preempted by ERISA Private Enforcement Provision: A terminally ill paralegal sued a disability insurer, claiming benefits and other damages under a long-term disability insurance policy under both the federal Employee Retirement Income Security Act of 1974 (ERISA) and this chapter, commonly known as the Unfair Trade Practices Act. The District Court entered judgment for the insured under ERISA claims, but ruled for the insurer on the claims under this chapter. On appeal, the Ninth Circuit Court affirmed the District Court decision, ruling that the plaintiff's claims under this chapter seeking non-ERISA damages for claim processing causes of action were preempted by ERISA's private enforcement provision. Elliot v. Fortis Benefits Ins. Co., 337 F3d 1138 (2003).

Dismissal of Insurer Improper in Light of Dispute Over Amount of Damages Owing in Excess of Liability Limits: Following a vehicle accident, a couple sought recovery for injuries and loss of consortium and also alleged that the damages exceeded the limits of defendants' coverage, entitling them to recover from their own policy. The District Court bifurcated the claims and then sua sponte dismissed the insurer from the action without prejudice. The couple sought to reverse the dismissal order, and the Supreme Court obliged. The District Court held that because a jury had not determined the couple's damages and because the insurer had agreed to pay the amount of the verdict up to the policy limits, there was no dispute between the couple and the insurer. However, the Supreme Court noted that the couple and the insurer disagreed on the amount of damages in excess of the amount that was payable under the liability limits of the policy. This was a dispute that the couple was entitled to litigate, so dismissal of the insurer was improper, and the case was remanded for further proceedings. State ex rel. Gadbaw v. District Court, 2003 MT 127, 316 M 25, 75 P3d 1238 (2003), following Dill v. District Court, 1999 MT 85, 294 M 134, 979 P2d 188 (1999). See also Dias v. Healthy Mothers, Healthy Babies, Inc., 2002 MT 323, 313 M 172, 60 P3d 986 (2002).

Failure of Insurer to Pay Within Sixty-Day Period Specified in Insurance Contract — No Error in Interpretation of Contract: An insurance contract required the insurer to pay for a loss within 60 days after the insurer received proof of loss and: (1) the parties reached an agreement; (2) there was a final judgment; or (3) the insured filed an appraisal with the insurer. The insured sought money damages because the claim was not paid within the 60-day period following the joint appraisal, which resulted in plaintiffs' alleged mental anguish and emotional distress. However, given a lengthy dispute over the amount of damages, the significant disparity between estimates, and plaintiffs' rejection of the joint appraisal, the District Court found that the agreement contemplated by the contract that would trigger the 60-day payment period was never reached. Plaintiffs appealed on grounds that the District Court misinterpreted the contract. The Supreme Court affirmed. The rejected joint appraisal did not constitute an agreement. Because the contractual requirements for the 60-day payment period were not met, the District Court did not err when it declined to conclude that the insurer should have made payment within 60 days of the joint appraisal. Nelson v. Farmers Union Mut. Ins. Co., 2003 MT 101, 315 M 268, 68 P3d 689 (2003).

Failure of Proof of Unfair Trade Practices — Action of Insurer in Determining Proof of Loss: Plaintiffs alleged that their insurer refused to pay for hail damage to their home and sought money damages for mental anguish and emotional distress, punitive damages, costs, and attorney fees. The underlying cause was dismissed with prejudice after the insurer made the payment, so the only remaining claims were for loss of the use of money and the derivative claim seeking punitive damages. The District Court found in favor of the insurer, concluding that there was a failure of proof for the claims under 33-18-201(4) and (6), and plaintiffs appealed. The Supreme Court affirmed. Under this section, an insurer may not be held liable if the insurer has a reasonable basis in law or in fact for contesting a claim or the amount of a claim. In this case, it was reasonable for the insurer to immediately seek bids for the replacement costs and to seek current bids from contractors following plaintiffs' rejection of a joint appraisal. The insurer's actions were reasonable, and little if any of the delay could be attributed to the insurer. In the absence of evidence from plaintiffs to the contrary, the alleged unfair trade practice was unproved. Nelson v. Farmers Union Mut. Ins. Co., 2003 MT 101, 315 M 268, 68 P3d 689 (2003).

State Law Tort Claims Not Protected or Prohibited by FELA — Dismissal for Failure to State Claim Improper: Reidelbach worked for the railroad for about 20 years but was forced to stop working because of job-related disabling cumulative spinal injuries. Reidelbach reached an agreement with the railroad's claim representatives under which he would forego pursuing a claim under the Federal Employers' Liability Act (FELA) and the railroad would propose a fair settlement for the injuries. After 2 years, no settlement was offered, and ultimately the parties exchanged counteroffers, but no agreement on an amount was reached. Reidelbach then filed a timely FELA claim and also brought several state claims, alleging that the railroad had engaged in unfair, dilatory, and fraudulent claims practices. The District Court concluded that all the postinjury state claims were preempted by FELA and dismissed them pursuant to former Rule 12(b), M.R.Civ.P. (now superseded), so Reidelbach appealed. Following an extensive analysis of federal law related to preemption in its various forms, the Supreme Court held that Reidelbach's state claims were neither expressly nor impliedly preempted by FELA and did not conflict with or stand as an obstacle to the accomplishment and execution of FELA. Therefore, the District Court erred in dismissing Reidelbach's state claims on grounds of FELA preemption, and the case was reversed and remanded for trial in state court. Reidelbach v. Burlington N. & Santa Fe Ry. Co., 2002 MT 289, 312 M 498, 60 P3d 418 (2002). See also Dannels v. BNSF Ry. Co., 2021 MT 71, 403 Mont. 437, 483 P.3d 495.

Forman Defense — Issues of Material Fact Regarding Whether Insurance Company Breached Duty to Inform Agent of Litigation Risks in Sale of Policy — Summary Judgment Inappropriate: An insured brought an action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. The agent cross-claimed against the company for indemnity and breach of fiduciary duty, contending that there was a significant amount of evidence that Revere planned to assert the Forman defense in Montana (see Mass. Cas. Ins. Co. v. Forman, 516 F2d 425 (5th Cir. 1975), in which an insurer asserts a legal defense to the incontestability clause based on its definition of sickness as excluding disabilities that manifested themselves prior to the date of issue of the policy) and that Revere's failure to inform Deonier of its intention to invoke the defense was a clear breach of Revere's duty to inform its agents of a risk of pecuniary loss from potential lawsuits. Revere asserted that, pursuant to Doettl v. Colonial Life & Accident Ins. Co., 505 F. Supp. 127 (D.C. Mont. 1981), in which a Montana federal District Court endorsed the Forman defense, it had no reason to believe that its policy interpretation might be in violation of Montana law and therefore did not breach its duty to inform its agents of risk of pecuniary loss. The District Court found that Revere owed Deonier a fiduciary duty pursuant to Restatement (Second) of Agency 435 (1958), but, apparently applying this section, determined that Revere did not breach that duty and dismissed the breach of fiduciary duty action by summary judgment. On appeal, the Supreme Court found the application of this section to be misplaced, the proper analysis being simply whether Revere breached Restatement (Second) of Agency 435 (1958). The Supreme Court agreed that a principal has no duty to inform its agent of unknown future legal positions, but in this case, the potential consequences of applying the Forman defense were not unknown, having been the subject of a Revere corporate counsel paper published in 1987, years before the disability policy at issue in this case was issued. The court also found Revere's argument based on Doettl to be without merit. Although Doettl applied some Montana law, it was not binding on the Montana Supreme Court. Because the issue was still one of first impression in Montana, Revere could not rely on Doettl to support its position that as a matter of uncontroverted fact and law, it had no knowledge of risk to its agents. Thus, the question of whether Revere breached its duty to inform Deonier of the risks of litigation involved issues of material fact, so the District Court's award of summary judgment to Revere was reversible error. Deonier & Associates v. Paul Revere Life Ins. Co., 2000 MT 238, 301 M 347, 9 P3d 622, 57 St. Rep. 989 (2000).

Indemnity of Insurance Agent for Defending Actions Performed on Insurer's Behalf in Solicitation of Application for Insurance: An insured brought a negligent misrepresentation action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. Deonier cross-claimed against the company for indemnity, and the District Court required Revere to indemnify for damages that Deonier suffered as a result of the lawsuit. Revere appealed on grounds that Deonier was acting as an agent for the insured when recommending a disability policy, rather than as an agent for Revere, asserting that the fees that Deonier incurred were for defending the insured's claim that Deonier was actively negligent, defeating an indemnity claim. The Supreme Court affirmed, holding that because Revere admitted in its pleadings that there was no basis in law or fact for the negligent misrepresentation claim against Deonier, Revere implicitly conceded that Deonier's liability to the insured arose solely from the agency relationship between Deonier and Revere, a situation in which indemnity was required. Deonier & Associates v. Paul Revere Life Ins. Co., 2000 MT 238, 301 M 347, 9 P3d 622, 57 St. Rep. 989 (2000). See also Tynes v. Bankers Life Co., 224 M 350, 730 P2d 1115 (1986), and Restatement (Second) of Agency 439 (1958).

Claim for Common-Law Tort of Bad Faith by Third Party Not Preempted by Statute — General Statute of Limitations Applicable: The District Court dismissed Brewington's complaint against two insurance companies based on the conclusion that the complaint failed to state a claim for which relief could be granted because the claim was barred by the statute of limitations in this section regarding third-party claimants. Brewington contended that the claim was based on the common-law tort of bad faith, not on this section. The Supreme Court construed the plain language of the statute in determining that by its terms, this section does not prohibit a third-party claimant from bringing an action for bad faith. Both Vigue v. Evans Prod. Co., 187 M 1, 608 P2d 488 (1980), and Hayes v. Aetna Fire Underwriters, 187 M 148, 609 P2d 257 (1980), establish a common-law cause of action for bad faith that was not affected by the passage of this section. When the common law is not in conflict with a statute, the common law applies. Thus, the District Court's conclusion that this section prohibited Brewington from pleading the common-law tort of bad faith was reversible error. Further, because the claim was brought for bad faith and not pursuant to this section, the 3-year statute of limitations in 27-2-204, not the 1-year statute of limitations in this section, applied. Brewington v. Employers Fire Ins. Co., 1999 MT 312, 297 M 243, 992 P2d 237, 56 St. Rep. 1257 (1999), distinguishing Grenz v. Orion Group, Inc., 243 M 486, 795 P2d 444, 47 St. Rep. 1346 (1990).

Broad Language in Complaint as Opportunity to Litigate Unfair Claims Practices Action — Res Judicata Barring Second Action — Summary Judgment Proper: The doctrine of res judicata not only precludes a party from relitigating claims that were litigated in a previous action, but under Balyeat Law, P.C. v. Hatch, 284 M 1, 942 P2d 716, 54 St. Rep. 780 (1997), res judicata will also bar an action for a claim that a party had an opportunity to, but did not, litigate in a previous action. In the present case, Fisher sued State Farm General Insurance Company (State Farm) and one of its agents for wrongfully denying coverage, alleging in the complaint that defendants were liable "for damages incurred as a result of the subject fire and the denial of coverage on theories of breach of contract, negligence, negligent misrepresentation, fraud, and any other applicable legal theories", and sought relief for money due under the insurance policy and "other further relief as the court may deem just and proper". One year later, Fisher filed a second action based on State Farm's denial of coverage, alleging failure to conduct a reasonable investigation of the claim and to attempt a good faith settlement. A few months later, State Farm presented a written offer of judgment on all claims in the original action, which Fisher accepted. Fisher then amended the second action to include allegations of a violation of the Unfair Claims Practices Act (UCPA) and sought punitive, special, and general damages. The District Court granted summary judgment for State Farm on grounds that the second action was barred by res judicata. The Supreme Court affirmed. Under the broad wording of the original complaint, Fisher clearly had the opportunity to litigate the UCPA claim. Had the claim been less broadly drafted, a judgment in the first action could not have barred the second action. However, the criteria of res judicata regarding identity of subject matter, issues, and relationship of the parties were met, and summary judgment on the second action was proper. Fisher's argument that the application of res judicata essentially negated statutory permissive joinder provisions and compelled mandatory joinder of otherwise independent causes of action was unpersuasive. Fisher v. St. Farm Gen. Ins. Co., 1999 MT 308, 297 M 201, 991 P2d 452, 56 St. Rep. 1236 (1999).

Common-Law Action Based on Events Occurring Before Insurance Claim: A renewed liability policy contained a change in an exclusion for pollution incidents. Following that, a claim, and defense of the insureds in a suit against them, for a pollution incident was denied. The insureds sued the insurer for negligence, bad faith, and breach of a fiduciary duty. The District Court granted the insurer summary judgment on the ground that these were common-law tort claims barred by the provision of this section, which provides that an insured suffering damages from the handling of an insurance claim may sue for breach of contract, for fraud, or under that section, but not under any other theory or cause of action. The Supreme Court reversed on the grounds that the insureds' claims were not for damages resulting from the handling of the claim because the cause of action focused on events that occurred prior to the filing and handling of the claim, that is, the failure to inform the insureds of the policy change, and that the insureds alleged pure common-law claims without adding violations under Title 33, ch. 18, commonly known as the Unfair Trade Practices Act. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

Duty to Inform Insured of Change in Policy Exclusion — Specific Notice as Against Notice by Providing Renewal Policy With the Change: Section 33-15-1106 provides that if an insurer offers to renew a policy on less favorable terms, the new terms take effect on the policy renewal date only if the insurer mailed or delivered notice of the new terms to the insured at least 30 days before the expiration date. That section required the insurer to inform the insured of the change in pollution coverage exclusion in a liability policy because an insurer has an affirmative duty to provide adequate notice to the insured of changes in coverage. The question whether giving the insured an amended policy that referred to and contained the pollution coverage exclusion change constituted sufficient notice should have gone to trial, and it was reversible error requiring remand of the issue to grant the insurer summary judgment under the general principle that an insured has a duty to read and examine the policy. That principle is not absolute, and the extent of the duty to read the policy depends on what is reasonable under the facts and circumstances of each case. For a renewal policy, the insured's duty to read it may be less than the duty to read the original policy. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

Failure to Inform Insureds of Change in Renewed Policy as Bad Faith: A renewed liability policy contained a change in an exclusion for pollution incidents. Following that, a claim, and defense of the insureds in a suit against them, for a pollution incident was denied. The insurer claimed that the insureds should have read the policy and would have noticed the change if the policy had been read. The insureds claimed that the insurer should have notified the insureds of the change. It was error for the District Court to grant the insurer summary judgment on the insureds' bad faith claim. Under Story v. Bozeman, 242 M 436, 791 P2d 767 (1990), the scope of the tort of bad faith was limited to a contractual setting in which special circumstances exist between the parties and the matter is not otherwise controlled by specific statutory provisions. The court adopted the following five elements for special circumstances: (1) the contract parties are in inherently unequal bargaining positions; (2) the complainant had a nonprofit motive for entering into the contract; (3) ordinary contract damages are inadequate because they do not require the party in the superior position to account for its actions and do not make the inferior party whole; (4) the complainant is especially vulnerable because of the type of harm that it may suffer and of necessity must place trust in the other party to perform; and (5) the other party is aware of the vulnerability. In this case, the Story test was met. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

Failure to Inform Insureds of Change in Renewed Policy as Breach of Fiduciary Duty: A renewed liability policy contained a change in an exclusion for pollution incidents. Following that, a claim, and defense of insureds in a suit against them, for a pollution incident was denied. The insurer claimed that the insureds should have read the policy and would have noticed the change if the policy had been read. The insureds claimed that the insurer should have notified the insureds of the change. It was error for the District Court to grant the insurer summary judgment on the insureds' claim of breach of fiduciary duty. Thomas v. NW. Nat'l Ins. Co., 1998 MT 343, 292 M 357, 973 P2d 804, 55 St. Rep. 1388 (1998).

District Court Jurisdiction Over Claims-Handling Practices: Hicklin sued the claims handler for a company in liquidation. A Montana District Court has jurisdiction over a case in which plaintiff is not proceeding against the liquidated company; does not claim entitlement to its assets, property, or estates; and is not attempting to enforce a contractual obligation of the company. The claim focuses on the claims handler's independent torts committed subsequent to the company's liquidation, and the District Court erred when it concluded that it did not have subject matter jurisdiction. Hicklin v. CSC Logic, Inc., 283 M 298, 940 P2d 447, 54 St. Rep. 675 (1997).

Bifurcation of Breach of Insurance Contract and Bad Faith Claims — Use of Supervisory Control to Require That Both Claims Be Tried to Same Jury: After the District Court bifurcated the Malta school district's insurance contract and bad faith claims, the school district requested by motion that both claims be tried to the same jury, one claim immediately following the other. The District Court denied the motion, and the school district sought a writ of supervisory control. The Supreme Court granted the writ and directed the District Court to try the contract claim and the bad faith claim to the same jury. Because this section contains no standards governing whether a bifurcated case should be tried to the same jury, the Supreme Court looked to cases decided under former Rule 42(b), M.R.Civ.P. (now superseded), for guidance and, after finding the state and federal versions of the same rule sufficiently similar, relied upon Martin v. Bell Helicopter Co., 85 FRD 654 (1980). The Supreme Court held that a two-step process should be used; it should first be determined whether bifurcation is appropriate and then whether the interests of judicial economy, fairness to the parties, clarity of the issues, and convenience require trial of the issues to the same or a different jury. In determining whether to grant the writ of supervisory control, the Supreme Court weighed the same or similar considerations also weighed by the Supreme Court pursuant to Martin v. Bell Helicopter Co. to determine whether separate juries should be used. The Supreme Court reviewed the circumstances of the case and found that the writ of supervisory control should be granted and that the District Court abused its discretion in refusing to try the two claims to the same jury. Malta Pub. School District A & 14 v. District Court, 283 M 46, 938 P2d 1335, 54 St. Rep. 486 (1997), followed in State ex rel. Gadbaw v. District Court, 2003 MT 127, 316 M 25, 75 P3d 1238 (2003).

No Policy Coverage — Reasonable Basis to Deny Coverage: Bartlett obtained an insurance binder from Allstate on a house that Bartlett intended to buy. The transaction did not close, and the house was destroyed by fire 1 month later. Allstate denied Bartlett's claim for recovery. Bartlett sued for wrongful denial of insurance proceeds and unfair trade practices. The District Court granted summary judgment to Allstate. On appeal, the Supreme Court held that the lower court did not err and affirmed the summary judgment ruling. Because the transaction did not close, Bartlett did not have an insurable interest in the property at the time of loss. On that ground, Allstate clearly had a reasonable basis for not paying Bartlett's claim for insurance proceeds. Bartlett did not have a colorable claim against Allstate for unfair trade practices or for fraud, constructive fraud, or punitive damages. Bartlett v. Allstate Ins. Co., 280 M 63, 929 P2d 227, 53 St. Rep. 1300 (1996).

District Court Jurisdiction to Determine Unfair Trade Practices Alleged Before Workers' Compensation Settlement Agreement: Poteat brought a District Court complaint alleging unfair trade practices, breach of contract, and actual malice under this section. Because the underlying claim contained unresolved future workers' compensation medical benefits and the Workers' Compensation Court has exclusive jurisdiction over workers' compensation claims, the District Court determined that it had no jurisdiction to hear an unfair trade practices case until Poteat obtained a judgment or settlement of the entire underlying claim. The Supreme Court determined that counts one and four alleged actual malice and unfair trade practices before the settlement agreement, which were not based on an underlying claim that had not been settled or adjudicated, and that counts two and three alleged breach of contract and unfair trade practices after the settlement agreement, which concerned the unresolved issue of future medical benefits not yet adjudicated by the Workers' Compensation Court. The District Court erred in dismissing the entire case on grounds of lack of jurisdiction. The counts regarding unfair practices *before* settlement had their basis in a valid existing settlement agreement, and Poteat was therefore entitled to pursue the counts regarding presettlement trade practices. However, Poteat was not entitled to pursue the counts regarding unfair practices *after* settlement until the issue of future medical benefits was adjudicated. The case was thus affirmed regarding counts two and three and reversed regarding counts one and four. Poteat v. St. Paul Mercury Ins. Co., 277 M 117, 918 P2d 677, 53 St. Rep. 568 (1996).

Certified Questions — Settlement or Judgment Not Required as Precondition to Action Against Insurer — Unfair Claims Settlement Practices Action Not Barred by Terms of Policy: In an original proceeding pursuant to former Rule 44, M.R.App.P. (now superseded), the Supreme Court responded to two certified questions from the Ninth Circuit Court of Appeals and held that an insured need not pursue the underlying claim to the point of settlement or judgment before bringing an action against the insurer under the unfair claims settlement practices statutes codified in Title 33, ch. 18. This was true, notwithstanding a "no action" clause in the insurance policy, because the clause was contrary to public policy. The Supreme Court also held that the insured was not barred by the "no action" clause of the policy from bringing an action under the unfair claims settlement practices statutes when the company did not object to direct settlement between the plaintiff and insured in the underlying action and when the insurer contributed the policy limits to that settlement. Peris v. Safeco Ins. Co., 276 M 486, 916 P2d 780, 53 St. Rep. 481 (1996).

Standards for Testimonial Waiver of Work Product: The standards for waiver by testimonial use of the work product differ between opinion and ordinary work product. With ordinary work product, once a witness makes testimonial use of the files, the witness implicitly waives the protections of the work-product doctrine with respect to factual matters covered in the testimony of the witness. However, waiver by testimonial use does not apply to opinion work product unless the testimony directly discloses the witness's impressions. Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993). See also In re Martin Marietta Corp., 856 F2d 619 (4th Cir. 1988).

Individuals as Well as Insurers Liable for Unfair Trade Practices: The defendant in a personal injury case filed a counterclaim against the plaintiffs, alleging that their negligence was the cause of the automobile accident involving the parties. Subsequently, in his deposition, the defendant admitted that he had been intoxicated at the time of the accident, that he had been driving negligently, and that the plaintiffs had not been negligent. The plaintiffs sought summary judgment to dismiss the defendant's counterclaims, but prior to the hearing, the defendant voluntarily dismissed his counterclaims. The plaintiffs then sought damages from the insurer and the agent for bad faith in violation of the insurer's statutory duty to settle a claim when liability becomes reasonably clear. The agent argued that this section limits liability for unfair trade practices to insurers. The Supreme Court held that that portion of Klaudt v. Flink, 202 M 247, 658 P2d 1065 (1983), holding that 33-18-201 did afford a plaintiff a common-law cause of action against individuals, had never been reversed or modified. The Supreme Court further held that the statutory cause of action provided for in this section and the different standard of proof provided for by the statute apply only to insurers, while the common-law cause of action and standard of proof provided for by 33-18-201 apply to insurers and individuals. O'Fallon v. Farmers Ins. Exch., 260 M 233, 859 P2d 1008, 50 St. Rep. 1022 (1993), followed in Debruycker v. Guar. Nat'l Ins. Co., 266 M 294, 880 P2d 819, 51 St. Rep. 835 (1994), in which the Supreme Court acknowledged the different standards of proof for claims against individuals and insurers, but nevertheless reversed a lower court decision striking a jury punitive damage award against an individual when the common-law standing of the party was not raised as an issue prior to appeal.

Administration of Automobile Service Contract — Trade Practices Claim to Await Resolution of Breach of Contract Claim: When Harman bought an automobile from a dealer, he also bought an extended service contract that was to be administered by MIA. MIA declared itself bankrupt shortly after Harman's purchase. Century, a wholly owned subsidiary of CIGNA, sold an insurance policy to the car dealer to cover repair costs not covered by the agreement between the dealer and MIA. When MIA declared bankruptcy, AAC, another subsidiary of CIGNA, was used to adjust service contracts sold by MIA. Later, Harman made a claim against the service contract when the front axle of his vehicle was damaged. AAC refused the claim, saying that the repair was not covered by the contract. Harman brought a breach of contract action and an unfair trade practices claim against AAC. The Supreme Court held that because Harman was a third-party beneficiary of the agreement between Century and AAC, he could sue AAC for breach of contract, but pursuant to subsection (6)(b) of this section, MCA, the unfair trade practices action must await resolution of the underlying contract action against AAC or the car dealer. Harman v. MIA Serv. Contracts, 260 M 67, 858 P2d 19, 50 St. Rep. 954 (1993).

Excess Insurer's Action Against Primary Insurer Based Upon Subrogation and Not Independent Right — Dismissal of Other Action — No Subrogation: St. Paul's insured, Lynn, and Allstate's insured, Glassing, were involved in a car accident. After judgment against Glassing, St. Paul paid Lynn pursuant to the underinsured motorist provision of its policy and then sought recovery itself against Allstate based on a right of equitable subrogation and Allstate's failure to settle Lynn's claim. The Supreme Court held that St. Paul could not act as a third-party claimant and bring an action directly against Allstate based upon subrogation and Allstate's failure as a primary insurer to pay its policy limits to Lynn. The Supreme Court noted that there is no independent duty of Allstate to pay the policy amount to St. Paul, that duty depends only upon subrogation of the rights of Lynn, and that at the time of the action, Lynn had no right against Allstate because of a stipulation dismissing an action in federal District Court against Allstate. St. Paul Fire & Marine Ins. Co. v. Allstate Ins. Co., 257 M 47, 847 P2d 705, 50 St. Rep. 154 (1993), followed in Nimmick v. St. Farm Mut. Auto. Ins. Co., 270 M 315, 891 P2d 1154, 52 St. Rep. 208 (1995).

Cause of Action Applicable to Insurer Only: A workers' compensation claimant filed a complaint in District Court against an insurer and the attorneys and the law firm defending the insurer, alleging bad faith in the adjusting or handling of his claim. The court properly dismissed the complaint upon finding that the underlying claim had not been settled or a judgment entered in claimant's favor. The Supreme Court applied this section in holding that the law firm and its attorneys defending the insurer did not fall within the definition of an "insurer" against whom an independent action could be maintained. Grenz v. Orion Group, Inc., 243 M 486, 795 P2d 444, 47 St. Rep. 1346 (1990).

Proof of Liability of Insured Not Required Prior to Bad Faith Litigation: Subsection (6)(b) of this section requires settlement or entry of judgment on the underlying claim prior to instigation of a bad faith claim. However, this section does not require that liability of the insured be established as a condition precedent to bad faith litigation. Lough v. Ins. Co. of N. America, 242 M 171, 789 P2d 576, 47 St. Rep. 646 (1990).

Bad Faith Claim Suspended Until Liability Determined: Plaintiff sued defendant, insurer of another driver, following a three-car accident. Defendant denied any liability on the part of its insured and refused to pay any part of plaintiff's claim. Plaintiff then filed a bad faith action against defendant. The District Court granted summary judgment. The Supreme Court reversed and remanded the case. The court overruled Klaudt v. Flink, 202 M 247, 658 P2d 1065, 40 St. Rep. 64 (1983), to the extent that Klaudt allowed a bad faith claim to be pursued although liability for an accident had not been determined. The court noted several problems in this procedure and held that all proceedings in a bad faith case alleging violations of the insurance laws which require a showing that liability be reasonably clear are suspended until the liability issues of the underlying case are determined by judgment or settlement. The bad faith case may be filed to toll the Statute of Limitations, but no discovery may be engaged. A favorable District Court judgment for the plaintiff is sufficient to trigger discovery in the bad faith case. Fode v. Farmers Ins. Exch., 221 M 282, 719 P2d 414, 43 St. Rep. 814 (1986), followed in In re Petition of Johnson, 224 M 337, 728 P2d 1354, 43 St. Rep. 2232 (1986), and distinguished in Peris v. Safeco Ins. Co., 276 M 486, 916 P2d 780, 53 St. Rep. 481 (1996). See also Holmgren v. St. Farm Mut. Auto. Ins. Co., 976 F2d 573 (1992).

Remedy in Contract or in Tort — Motion for Separate Trials: An insurer requested a separate trial on the affirmative defenses raised by cross-claim and requested that the trial of the remaining issues raised by the insured be postponed until after the final determination of the affirmative defenses. The Supreme Court noted that the insured, having a choice of two remedies, one in contract and one in tort, elected to pursue his claim in tort. Recovery by him on his claim in tort would have the effect of barring his claim for breach of contract. If the motion for separate trials had been granted, it would have converted insured's claim for tort to one for breach of contract. Insured would then have been precluded from presenting any evidence as to consequential damages for the tort, let alone any evidence relating to punitive damages. His right to trial by jury of his tort claim, guaranteed by the seventh amendment to the U.S. Constitution and Art. II, sec. 26, Mont. Const., would have been prejudiced. Denial of the motion to bifurcate was proper. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

Separate Trials as Abuse of Discretion — No Written Order or Minute Entry on Motion to Bifurcate: The District Court declined to bifurcate a trial so as to determine separately whether the insured intentionally caused a fire and whether the insurer committed a breach of good faith, based on the mistaken impression that a District Court Judge earlier in jurisdiction had denied bifurcation. Although all the parties assumed such an order was made, the record disclosed no order, and the insurer neither procured a written order granting or denying the motion nor caused a minute entry to be made of the disposition of the motion. The Supreme Court found that under the insured's tort claim, the issues of fact regarding the insurer's violations of the Unfair Claims Settlement Act were so inextricably woven with the insurer's claim of arson that their separation would be an abuse of discretion resulting in extended and needless litigation. A trial court cannot be put in error on matters not brought to its attention by notice or otherwise. Section 33-18-241 (now repealed) was held not to apply, both because of the statutory effective date and because this case involved a first-party rather than a third-party claim. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

DUTY TO SETTLE

Assessment of Reasonableness Question of Law — Summary Judgment for Insurer Appropriate: Redies sued the Attorneys Liability Protection Society (ALPS) for allegedly engaging in unfair trade practices by failing to promptly settle a legal malpractice suit against one of the ALPS's insureds, for alleged tortious breach of statutory duties, and for breach of implied duty of good faith and fair dealing. At the time that the ALPS refused to settle, Montana law did not unequivocally recognize a professional duty running from a lawyer for a conservator to a nonclient beneficiary, such as Redies, although a subsequent Supreme Court case signaled that an attorney may owe a duty to nonclients in some contexts. The District Court granted summary judgment, and the Supreme Court upheld. The Supreme Court found that the ALPS had a reasonable basis in law for contesting Redies' claims at the time that the decision was made. The court clarified that although the assessment of reasonableness generally is within the province of the jury or factfinder, reasonableness is a question of law for the court to determine when it depends entirely on interpreting relevant legal precedents and evaluating the insurer's proffered defense under those precedents. Redies v. Attorneys Liability Protection Soc'y, 2007 MT 9, 335 M 233, 150 P3d 930 (2007), distinguished in Estate of Gleason v. Cent. United Life Ins. Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349. See also St. Farm Mut. Auto. Ins. Co. v. Freyer, 2013 MT 301, 372 Mont. 191, 312 P.3d 403, in which the Supreme Court analyzed whether the insurer had a reasonable basis for contesting claims related to a car accident and affirmed summary judgment in favor of the insurer on the plaintiff's claims of common-law bad faith, unfair trade practices, and breach of the covenant of good faith and fair dealing.

Incorrect Dismissal of Declaratory Judgment Seeking Payment of Prejudgment Medical Expenses — Ridley and Safeco Clarified: DuBray filed a complaint for a declaratory judgment, asking for a determination that Farmers Insurance Exchange (Farmers) was required to pay DuBray's medical expenses prior to settlement of or judgment on the underlying claim. DuBray also sought prejudgment interest, costs of suit, and compensatory and punitive damages. The District Court found that the complaint was effectively a bad faith action barred by this section prior to resolution of the underlying claim against Farmers and dismissed the claim in its entirety for failure to state a claim upon which relief could be granted. DuBray appealed, citing Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834 (2000), wherein the Supreme Court approved declaratory judgment actions as a means for compelling advance payment of medical expenses. Farmers contended that Safeco authorized declaratory judgment actions only for damages that, according to Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997), are owed prior to final judgment, that the only damages to which Ridley applied are undisputed medical expenses, and that the District Court should therefore be affirmed. The Supreme Court affirmed Safeco inasmuch as that case does not authorize a declaratory judgment to determine an insurer's liability prior to resolution of the underlying claim, with the exception of damages for which liability is reasonably clear, which are not barred by this section. Therefore, the District Court correctly dismissed DuBray's claims for pain and discomfort, mental distress, inconvenience, and punitive damages. However, Farmers' liability for medical damages was reasonably clear, so the District Court committed reversible error in dismissing the portion of DuBray's claim that sought payment of medical expenses. The Supreme Court went on to clarify Safeco and Ridley to ensure that those cases not be construed to apply only to medical expenses, because medical expenses are just one of the obligations incurred by victims that mandatory liability insurance laws were designed to eliminate, another being lost wages that are reasonably certain and directly related to an insured's negligence or wrongful act. DuBray v. Farmers Ins. Exch., 2001 MT 251, 307 M 134, 36 P3d 897 (2001). See also Hop v. Safeco Ins. Co., 2011 MT 215, 361 Mont. 510, 261 P.3d 981, which held that residual diminished value—the difference between the value of a vehicle immediately before an accident and the value of the vehicle after postaccident repairs have been made—does not qualify as a type of damage that must be paid in advance as "not reasonably in dispute".

Declaratory Judgment Not Seeking Bad Faith Damages Not Statutorily Barred Under Unfair Trade Practices Act: Applying Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997), the District Court granted declaratory judgment against Safeco Insurance Company of Illinois (Safeco) for payment of medical expenses that were no longer in dispute and that were owed under a Safeco insured's policy. Safeco appealed on grounds that the declaratory judgment should be stayed under this section until after the settlement or final adjudication of the claim against its insured. The Supreme Court pointed out that under Fisher v. St. Farm Gen. Ins. Co., 1999 MT 308, 297 M 201, 991 P2d 452 (1999), an unfair trade practices claim against an insurer is an independent cause of action and only a third-party claimant who prevails at trial or achieves a settlement may in turn bring an unfair trade practices claim, theoretically extinguishing meritless claims before they are filed, thus protecting insurers from frivolous claims and facilitating judicial economy. However, the Supreme Court declined to transform the declaratory judgment claim in this case into an unfair trade practices claim, noting that, in fact, the unfair trade practices claim and the common-law bad faith claim had been dismissed by stipulation of the parties. The District Court did not err in concluding that because the declaratory judgment claim did not directly seek bad faith damages for an unfair trade practices violation, there was no statutory bar under this section. The declaratory judgment did not constitute a money judgment for damages in the ordinary sense, but merely removed all uncertainty and controversy over the issue of when the inevitable policy proceeds were due, and that judgment was therefore affirmed. Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834, 57 St. Rep. 604 (2000), followed and clarified in DuBray v. Farmers Ins. Exch., 2001 MT 251, 307 M 134, 36 P3d 897 (2001), insofar as nothing in Ridley or Safeco suggests that its scope should be limited to undisputed medical expenses. See also Hop v. Safeco Ins. Co., 2011 MT 215, 361 Mont. 510, 261 P.3d 981, which held that residual diminished value—the difference between the value of a vehicle immediately before an accident and the value of the vehicle after postaccident repairs have been made—does not qualify as a type of damage that must be paid in advance as "not reasonably in dispute".

No Direct Action Allowed Against Insurer Until Liability of Insured Established: Montana law does not allow a plaintiff to bring a direct action against an insurer until the liability of the insured has been established, unless such right is expressly sanctioned by the Legislature and not merely inferentially deduced. Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834, 57 St. Rep. 604 (2000). See also Ulrigg v. Jones, 274 M 215, 907 P2d 937 (1995).

Supervisory Control Granted to Address Stay of Declaratory Judgment Until Settlement Reached or Judgment Entered: Hill was injured in a vehicle accident caused by the negligence of Bennett, an insured of Safeco Insurance Company of Illinois (Safeco). Although Safeco apparently paid some of Hill's initial medical bills, Safeco eventually disputed the causal relationship between the accident and the injuries, refusing to pay any further medical bills after a specific date. Hill sued Bennett for negligence and Safeco for nonpayment of medical expenses, seeking a declaratory judgment that he was entitled to advance payment of medical costs prior to settlement or final judgment and claiming that a declaratory judgment was proper under the Unfair Trade Practices Act and Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997). The District Court granted the declaratory judgment, and Safeco sought a writ of supervisory control because a direct appeal would be an inadequate remedy. The Supreme Court agreed and granted the writ. Safeco's application presented an appropriate legal issue for supervisory control because if the ordered payment of medical expenses was a mistake of law or incorrect, the delay in awaiting the outcome of the corollary litigation could create an unfair prejudice for Safeco, while any unnecessary delay in the payment of the medical costs would certainly prejudice Hill. Ultimately, the Supreme Court affirmed on grounds that the declaratory judgment did not constitute a money judgment for damages in the ordinary sense, but merely removed all uncertainty and controversy over the issue of when the inevitable policy proceeds were due. Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834, 57 St. Rep. 604 (2000).

No Liability Per Se for Paying Mandatory Minimum Policy Limits — Avoiding Liability Through Coerced Economic Necessity: Guaranty National Insurance Co. (Guaranty) provided a minimum motor vehicle liability policy for Moore, who was clearly liable for injuring the Watterses in a car accident. Guaranty offered to settle the Watterses' claim to the extent of the policy coverage, but not without an absolute release of all liability. Guaranty argued that without a full release, it would be subject to a bad faith claim by Moore for placing the interests of a third-party claimant above those of its insured to whom it owed a fiduciary duty. The Supreme Court noted that under this section, an insured, but not a third-party claimant, is prohibited from bringing a bad faith action in connection with the handling of a claim. In purchasing the minimum required statutory coverage, Moore could not have reasonably expected that Guaranty would be obligated to provide greater coverage than that purchased by demanding a full liability release as a condition of paying the limits of the minimum coverage. When the monetary consequences of a person's tortious conduct undisputedly exceed policy limits and liability is clear, the only incentive for an injured third-party claimant to settle for policy limits and provide the insured with an absolute release from liability is some form of coerced economic necessity. Compelling an innocent third party to proceed to trial to recoup that which is already owed is inconsistent with public policy to encourage settlement and avoid unnecessary litigation. Guaranty would not have been exposed to per se liability for bad faith from Moore by paying the policy limits. Thus, when liability resulting from an automobile accident is reasonably clear and a third-party claimant's damages undisputedly exceed mandatory minimum policy limits pursuant to 61-6-103, the prompt, fair, and equitable settlement of the claims cannot be forestalled by an insurer based on an illusory bad faith or breach of contract claim that an insured may bring, and to refuse payment based on such an unfounded potential liability is itself a deceptive practice within the meaning of 33-18-201. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), following Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997).

Unfair Trade Practice to Require Full and Final Release of Liability Before Claim Paid Within Policy Limits — "Settlement" Distinguished From "Release": Guaranty National Insurance Co. (Guaranty) provided a minimum motor vehicle liability policy for Moore, who was clearly liable for injuring the Watterses' in a car accident. Guaranty offered to settle the Watterses' claim to the extent of the policy coverage, but not without an absolute release of all liability. The Watterses declined the offer, eventually bringing an unfair trade action against Guaranty for failing to promptly pay damages for which Moore was liable. Guaranty argued that the full release from liability was necessary to effectuate a settlement, citing Thompson v. St. Farm Mut. Auto. Ins. Co., 161 M 207, 505 P2d 423 (1973), and Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), and contended that because no settlement was proffered from the Watterses, Guaranty could not, as a matter of law, have violated 33-18-201. The Supreme Court instead applied Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997). The court clarified the relevant terms, noting that in accord with the general governing principles of contract law from which the law of settlements is derived, in the context of the Unfair Trade Practices Act, a settlement is synonymous with an enforceable bilateral contract that discharges a future or existing obligation, while a release, as a matter of law, is nothing more than an accord and satisfaction or one of several ways in which an obligation may contractually be discharged or settled for less than or for something different than from what is owed. The court concluded that a settlement between Guaranty and the Watterses was legally possible without the Watterses executing a full and final release of all liability, as evidenced by Guaranty's settlement of the Watterses' property damage claims within the limits of Moore's policy without a release. Thus, when liability resulting from an automobile accident is reasonably clear and a third-party claimant's damages undisputedly exceed mandatory minimum policy limits pursuant to 61-6-103, it is an unfair trade practice per se under 33-18-201 for an insurer to condition the payment of the owed mandatory minimum policy limits on the third party's agreement to provide a full and final release of all liability in favor of an insured. An insurer who pays mandatory minimum policy limits under these circumstances does not act in bad faith per se against its insured by not obtaining a full and final liability release on the insured's behalf. Unfortunately for the Watterses, under the case law in effect at the time, Guaranty had a reasonable basis under Juedeman upon which to deny payment of policy limits, so Guaranty's cross-motion for summary judgment was granted. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), overruling Thompson v. St. Farm Mut. Auto. Ins. Co., 161 M 207, 505 P2d 423 (1973), and Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992). See also High Country Paving, Inc. v. United Fire & Cas. Co., 2019 MT 297, 398 Mont. 191, 454 P.3d 1210.

Failure to Effectuate Insurance Settlement in Good Faith as Independent Cause of Action: Under 33-18-201, an insurer is required to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. A violation of this provision gives rise to an independent cause of action under this section. Because the continuing duty of good faith is not ended by commencement of a lawsuit by an insured, that duty can be breached by an insurer's postfiling conduct, including the actions of attorneys conducting the insurer's defense. Amendment of the claim to include an action under this section related back to the original claim and was properly allowed. Further, third-party defendant's alleged failure to conduct a reasonable investigation and its subsequent refusal to pay the claim, although occurring more than 2 years before commencement of plaintiff's cause of action, were, if proved, ostensibly part of the bad faith postjudgment conduct. Thus, the evidence of those acts was not time-barred. Federated Mut. Ins. Co. v. Anderson, 1999 MT 288, 297 M 33, 991 P2d 915, 56 St. Rep. 1152 (1999), following Safeco Ins. Co. v. Ellinghouse, 223 M 239, 725 P2d 217, 43 St. Rep. 1689 (1986), and Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993).

Coverage Properly Denied for Insured Who Claimed He Punched Another Person While Unconscious: Smith punched his babysitter in the face but claimed that she had hit him on the head first and that he was unconscious when he struck her. He pleaded guilty to a misdemeanor assault charge and was ordered to pay medical expenses, which he failed to do. The babysitter sued Smith, and he in turn sued his insurance company, which denied coverage on the basis that the policy denied coverage for injuries caused by intentional acts. The Supreme Court held that despite Smith's claim that he was unconscious from a blow to the head when he struck the babysitter, the conduct of striking her with his fist, by its nature, evinced an intent to injure and coverage was properly denied. Smith v. St. Farm Ins. Co., 264 M 129, 870 P2d 74, 51 St. Rep. 186 (1994).

Defense to Charge of Unfair Claim Settlement — Reasonable Basis for Denial of Claim to Be Determined by Trier of Fact: Shortly after the Deans' house was destroyed by fire, they were charged with arson. Their insurance company refused to settle their claim because of the pending arson charges. After the Deans were acquitted of the criminal charges, the insurance company paid them the policy limits. Later, the Deans filed an action in United States District Court alleging a number of violations of 33-18-201. The United States District Court certified a question to the Montana Supreme Court, asking whether the insurance company's refusal to pay the claim while the arson charges were pending constituted a "reasonable basis in law or fact", under this section, as a defense to the action. Citing Dees v. Am. Nat'l Fire Ins. Co., 260 M 431, 861 P2d 141, 50 St. Rep. 1068 (1993), the Supreme Court held that reasonableness was a question of fact for the trier of fact to decide. Dean v. Austin Mut. Ins. Co., 263 M 386, 869 P2d 256, 51 St. Rep 102 (1994), followed in Debruycker v. Guar. Nat'l Ins. Co., 266 M 294, 880 P2d 819, 51 St. Rep. 835 (1994), and distinguished in Watts v. Westland Farm Mut. Ins. Co., 271 M 256, 895 P2d 626, 52 St. Rep. 430 (1995).

Admissibility of Evidence of Insurer's Postfiling Litigation Conduct — Balancing Test: The District Court allowed Palmer to introduce evidence of insurer Farmers Insurance Exchange (Farmers) litigation strategy and tactics that Farmers' attorneys used in defending Palmer's uninsured motorist case and of Farmers' decision to appeal the judgment in that case, raising the question of whether evidence of an insurer's postfiling conduct was admissible in a bad faith action. The Supreme Court held that an insurer's duty to deal fairly and not withhold payment of valid claims does not end when an insured files a complaint against the insurer, but the continuing duty of good faith does not necessarily render evidence of an insurer's postfiling conduct admissible. The court reiterated the balancing test in Rule 403, M.R.Ev. (Title 26, ch. 10), as the correct approach between deterring improper conduct by insurers and allowing insurers to defend themselves against spurious claims. When an insurer's postfiling conduct has some relevance, the trial court must weigh its probative value against the inherently high prejudicial effect of such evidence, keeping in mind the insurer's fundamental right to defend itself. In this case, the prejudicial nature of evidence regarding litigation strategy and tactics and the decision to appeal far outweighed any relevance of the conduct, and the decision to admit the evidence was erroneous. Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993). See also White v. W. Title Ins. Co., 710 P2d 309 (Cal. 1985), followed in Federated Mut. Ins. Co. v. Anderson, 1999 MT 288, 297 M 33, 991 P2d 915, 56 St. Rep. 1152 (1999).

Protection of Work-Product Materials in Bad Faith Insurance Action — Ordinary Work Product Versus Opinion Work Product: The District Court ordered production of all of an insurer's claim files dated after the date that plaintiff's attorney expressed that plaintiff would proceed with a bad faith action for failure to settle a claim. Insurer contended that the order was in error because some of the materials were immune from discovery under the work-product doctrine. Normally, claim files are commenced in anticipation of litigation and an investigation must be geared toward the eventuality of litigation; thus, work-product protection applies from the time a claim file is opened (Kuiper v. District Court, 193 M 452, 632 P2d 694 (1981)). However, in a bad faith case, the investigation is not geared toward ultimate bad faith litigation from the time the file is opened because the insurer would have no reason to anticipate litigation and investigations are not made with the expectation of litigation. Materials consisting of work product prepared in anticipation of litigation have a qualified immunity from discovery under former Rule 26(b), M.R.Civ.P. (now superseded), but immunity depends on the type of work product being sought. Ordinary work product that relates to factual matters is discoverable to the extent that it is not privileged and is relevant to the pending action. Opinion work product that relates to mental impressions, opinions, conclusions, or legal theories is provided additional protection because it is necessary to provide a privileged area within which an attorney can analyze and prepare the client's case (U.S. v. Nobles, 422 US 225, 45 L Ed 141, 95 S Ct 2160 (1975)). In a bad faith case in which the issue is whether the insurer had a reasonable basis for denying a claim, the mental impressions and opinions of the insurer are directly at issue. Therefore, a party may discover the opinion work product of the representatives whose mental impressions are at issue only upon a showing of compelling need beyond the substantial need/undue hardship test required by former Rule 26(b). In this case, admission of the opinion work-product materials affected the insurer's right to a fair trial, warranting a remand. Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993).

Questionable Basis for Denial of Claim — Directed Verdict Inappropriate: Under common law and this section, an insurer cannot be held liable for bad faith in denying a claim if the insurer had a reasonable basis for contesting the claim or the claim amount. As determined in St. Paul Fire & Marine Ins. Co. v. Cumiskey, 204 M 350, 665 P2d 223 (1983), an insurer may file a declaratory judgment action to obtain a determination of the validity, continuance, or coverage of the policy, the extent of liability, or the insurer's duty under the policy. However, a directed verdict is not required simply because a reasonable basis may exist to deny coverage. If reasonable people could draw different conclusions about whether an insurer had a reasonable basis for contesting a claim, the issue becomes more than a question of law and a directed verdict is inappropriate. Palmer v. Farmers Ins. Exch., 261 M 91, 861 P2d 895, 50 St. Rep. 1210 (1993).

Refusal to Settle Hail Damage Claim — Denial of Claim Without Reasonable Investigation — Jury Question: Dees insured his wheat crop against hail damage with American National Fire Insurance Company. Immediately after a hailstorm caused damage to his fields, Dees telephoned American National, but an adjuster did not arrive until 3 weeks later. After inspecting the fields, American National refused to pay for the damage, claiming that the loss was because of wind and not hail. Both Dees and American National submitted evidence at trial supporting their respective theories on the cause of the damage to the wheat. The District Court refused to grant American National's motion for summary judgment, and the jury found for Dees. The Supreme Court held that the District Court did not err in refusing to grant the insurer's motion for summary judgment and motion for a directed verdict. Summary judgment should not have been granted because there was a genuine issue of material fact as to whether American National had denied Dees's claim without reasonable investigation. Likewise, a directed verdict would have been improper because a directed verdict may be granted only if there is a complete lack of evidence to warrant submission of the case to a jury. Dees v. Am. Nat'l Fire Ins. Co., 260 M 431, 861 P2d 141, 50 St. Rep. 1068 (1993).

Third-Party Claimant — Determination: The defendant in a personal injury case filed a counterclaim against the plaintiffs, alleging that their negligence was the cause of the automobile accident involving the parties. Subsequently, in his deposition, the defendant admitted that he had been intoxicated at the time of the accident, that he had been driving negligently, and that the plaintiffs had not been negligent. The plaintiffs sought summary judgment to dismiss the defendant's counterclaims, but prior to the hearing, the defendant voluntarily dismissed his counterclaims. The plaintiffs then sought damages from the insurer for bad faith in violation of its statutory duty to settle a claim when liability becomes reasonably clear. On appeal, the defendant's insurance company argued that the plaintiffs had no standing to sue under the unfair trade practices laws because they were not "insureds" or "third-party claimants" as those terms are used in this section. The Supreme Court held that the plaintiffs had alleged that they were injured by the insurer's violation of its duty to settle and therefore were third-party claimants within the meaning of the statute. O'Fallon v. Farmers Ins. Exch., 260 M 233, 859 P2d 1008, 50 St. Rep. 1022 (1993).

33-18-243. Insured and third-party claimant's duties — affirmative defense.

Compiler's Comments

Effective Date: Section 5, Ch. 430, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 4, 2023.

Preamble: The preamble attached to Ch. 430, L. 2023, provided: "WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim."

Saving Clause: Section 4, Ch. 430, L. 2023, was a saving clause.

33-18-245. Prompt payment of motor vehicle damage claims.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Case Notes

Sufficient Evidence to Support Jury Verdict Awarding Punitive Damages for Breach of Fiduciary Duty by Insurer in Dealings With Its Agent: An insured brought an action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. The agent cross-claimed against the company for indemnity and breach of fiduciary duty, contending that there was a significant amount of evidence that Revere planned to assert the Forman defense in Montana (see Mass. Cas. Ins. Co. v. Forman, 516 F2d 425 (5th Cir. 1975), in which an insurer asserted a legal defense to the incontestability clause based on its definition of sickness as excluding disabilities that manifested themselves prior to the date of issue of the policy) and that Revere's failure to inform Deonier of its intention to invoke the defense was a clear breach of Revere's duty to inform its agents of a risk of pecuniary loss from potential lawsuits. Revere asserted that pursuant to Doettl v. Colonial Life & Accident Ins. Co., 505 F. Supp. 127 (D.C. Mont. 1981), in which a Montana federal District Court endorsed the Forman defense, it had no reason to believe that its policy interpretation might be in violation of Montana law and therefore did not breach its duty to inform its agents of risk of pecuniary loss. Revere argued that punitive damages were inappropriate as a matter of law because it was entitled to assert any defense, including the Forman defense, that had a reasonable basis in the law. Deonier countered by pointing out that she had introduced evidence that by 1994 when Revere first used the Forman defense in Montana, it knew that its selling agents had been sued in at least 20% of the previous lawsuits and the company nevertheless refused to inform its agents of the risk of pecuniary loss if Revere decided to assert that defense. The Supreme Court held that based on the evidence alone, it could conclude that there was a complete absence of any evidence that would justify submitting the issue of punitive damages to the jury and therefore the lower court did not err in denying the motion for judgment as a matter of law on punitive damages. Deonier & Associates v. Paul Revere Life Ins. Co., 2004 MT 297, 323 M 387, 101 P3d 742 (2004).

33-18-247. Unfair discrimination prohibited — anatomical gifts, organ transplants, and related treatment.

Compiler's Comments

Effective Date: Section 7, Ch. 487, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 12, 2021.

33-18-251. Time-limited demands — requirements — insurer's fair and reasonable opportunity to investigate and evaluate claims.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Preamble: The preamble attached to Ch. 352, L. 2023, provided: "WHEREAS, it is declared to be the public policy of this state that fair, reasonable, and prompt settlements of civil actions and claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, the public policy of this state is not promoted by the making, presenting, or delivering of claims or settlement demands to insurers without all available and supporting documents, records, and information reasonably necessary and appropriate for an insurer to timely, fairly, and reasonably investigate and evaluate the claims or settlement demands; and

WHEREAS, both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to timely and fairly investigate and evaluate claims presented without the risk or exposure of having an unfair claim settlement practices or insurance bad faith claim asserted against the insurer or unreasonably creating additional liability exposure to the insurer beyond the limits of liability set forth in the insurance policy; and

WHEREAS, this policy benefits the citizens of this state because it promotes fair, reasonable, and prompt settlements of claims, and reduces the nature, extent, and duration of costly litigation in the courts of this state, while allowing insurers a reasonable opportunity to investigate and evaluate claims and to reasonably and fairly settle claims to protect policyholders and claimants."

Part 3
Insurers — Noninsurance-Related Prohibitions

33-18-301. Prohibited relations with mortuaries.

Compiler's Comments

2017 Amendment: Chapter 151 in (2)(b) substituted current language for "(b) This subsection (2) does not prohibit a life insurer from selling, soliciting, or negotiating funeral insurance, as defined in 33-20-1501(1)(c)(ii), through a funeral director, mortician, undertaker, or any employee of a mortuary or undertaker if the funeral director, mortician, undertaker or employee of a mortuary or undertaker, through whom the sale, solicitation, or negotiation occurs, is an insurance producer licensed and qualified under 33-17-214"; inserted (5) requiring certain persons to comply with requirements in Title 33; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2007 Amendment: Chapter 507 in (1) near middle after "representatives" inserted "that sell any life insurance, other than funeral insurance as defined in 33-20-1501(1)(c)(ii)"; in (2)(a) in two places after "director" substituted "mortician" for "mortuary"; in (2)(b) in first sentence at end after "insurer from" deleted "making insurance, designated as funeral insurance, available" and inserted language providing that an insurance producer is not prohibited from selling, soliciting, or negotiating funeral insurance through various persons engaged in the funeral, mortuary, or undertaking business if those persons are licensed insurance producers and inserted second sentence providing that the insurance producer shall comply with the provisions of 33-20-1501 and 33-20-1502; deleted former (3) that read: "(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary if there is an appropriate and insurable interest;

(c) the beneficiary may use the proceeds for any purpose"; inserted (3) providing that a funeral insurance policy or certificate and solicitation material must comply with 33-20-1501; in (4) near middle after "director" inserted "mortician"; and made minor changes in style. Amendment effective January 1, 2008.

Saving Clause: Section 8, Ch. 507, L. 2007, was a saving clause.

1999 Amendment: Chapter 472 in (1) near beginning after "its" inserted "board of directors"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1995 Amendment: Chapter 379 inserted (3) concerning material that must be indicated on a funeral insurance policy or solicitation material; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1981 Amendment: Added "in Montana" at the end of (1); inserted "or be named beneficiary" after "or mortuary shall conduct the funeral" in (2); added the last sentence of (2) allowing funeral insurance.

33-18-302. Defaming insurer prohibited.

Case Notes

Insurer Required to Establish Actual Damages — Interference With Prospective Economic Advantage: Plaintiff insurance company sued the defendants for making derogatory comments regarding its leadership and financial condition and alleging violations of the Unfair Trade Practices Act (UTPA) and interference with prospective economic advantage. The District Court granted summary judgment for the defendants, holding that the UTPA does not create a private right of action by one insurer against another and that the plaintiff had failed to establish damages. On appeal, the Supreme Court held that a business entity must establish actual and quantifiable economic damages and that the plaintiff failed do so with claims of general and reputational damages. Victory Ins. Co. v. Mont. St. Fund, 2015 MT 82, 378 Mont. 388, 344 P.3d 977.

33-18-305. Political contributions prohibited — penalty.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Part 5

Miscellaneous Prohibitions

33-18-501. Lenders — restrictions on solicitation, rejection, charges, and disclosure — favoring insurance producer prohibited.

Compiler's Comments

1991 Amendment: In (1) and (2)(e), in two places after reference to insurance producer, deleted reference to solicitor; and in (2)(c), after "insurer", deleted "solicitor".

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: In (2)(d), after "disclose", deleted "without the prior written consent of the borrower, mortgagor, or purchaser" and after "information" deleted "taken at a time other than the making of the loan or extension of credit"; and inserted (2)(d)(ii) referring to prior written consent of borrower.

33-18-502. Prohibited relations with long-term care facility.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Part 6

Montana Use of Credit Information in Personal Insurance

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

Severability: Section 14, Ch. 363, L. 2005, was a severability clause.

Applicability: Section 15, Ch. 363, L. 2005, provided: "[This act] applies to personal insurance policies written to be effective or renewed on or after October 1, 2005."

33-18-605. Use of credit information.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 227 in (1)(h) after "credit" inserted "report or an insurance"; and made minor changes in style. Amendment effective April 20, 2011.

Chapter 314 inserted (2)(e)(v) relating to military service overseas; and made minor changes in style. Amendment effective May 5, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

33-18-609. Filing.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) substituted "underwrite or rate" for "underwrite and rate". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

33-18-612. Refund for expunged record.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 9

Restrictions on Use of Genetic Information

Part Compiler's Comments

Saving Clause: Section 8, Ch. 334, L. 1999, was a saving clause.

Severability: Section 9, Ch. 334, L. 1999, was a severability clause.

Effective Date: This part is effective October 1, 1999.

Part 10

Enforcement

33-18-1003. Undefined unfair practices — procedures for determining and restraining.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-18-1004. Desist orders for prohibited practices.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Civil Action by Claimants for Violation of Chapter: A claimant may maintain a civil action against defendant's insurance company for violation of duty to settle in 33-18-201 by virtue of this section. Klaudt v. Flink, 202 M 247, 658 P2d 1065, 40 St. Rep. 64 (1983).

33-18-1006. Desist orders for prohibited practices.

Compiler's Comments

2005 Amendment: Chapter 407 near beginning after "through" substituted "33-18-224" for "33-18-223". Amendment effective October 1, 2005.

2001 Amendment: Chapter 345 after "through" substituted reference to 33-18-223 for reference to 33-18-224; deleted former (2) that read: "(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred"; and made minor changes in style. Amendment effective April 21, 2001.

Severability: Section 7, Ch. 345, L. 2001, was a severability clause.

Retroactive Applicability: Section 9, Ch. 345, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to October 1, 1999."

1999 Amendments — Composite Section: Chapter 472 in (1) substituted "33-18-224" for "33-18-223". Amendment effective October 1, 1999.

Chapter 526 in (1) substituted "33-18-224" for "33-18-223"; inserted (2) providing for court injunctions; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Section 7, Ch. 526, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Effective Date: Section 7, Ch. 554, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

CHAPTER 19
INSURANCE INFORMATION AND PRIVACY PROTECTION

Chapter Compiler's Comments

Severability: Section 26, Ch. 580, L. 1981, was a severability section.

Effective Date: Section 27, Ch. 580, L. 1981, provided: "(1) This act is effective on July 1, 1982.

(2) The rights granted under 33-19-301, 33-19-302, and 33-19-306 are effective on July 1, 1982, regardless of the date of the collection or receipt of the information that is the subject of those sections."

Part 1
General Provisions

Part Administrative Rules

Title 6, chapter 6, subchapter 69, ARM Insurance information and privacy protection.

Title 6, chapter 6, subchapter 70, ARM Insurance standards for safeguarding personal information.

33-19-102. Purpose.

Compiler's Comments

2001 Amendment: Chapter 341 inserted second and third sentences providing that purpose of chapter is to provide privacy protection consistent with federal law governing medical records when chapter is consistent with federal law and that when chapter and federal law are inconsistent, purpose of chapter is to provide additional privacy protection; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Preamble to the Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-103. Scope.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 1, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-104. Definitions.

Commission Notes

["Adverse Underwriting Decision"]: The use of the term "substandard" in [subsection (1)(a)(iv)(A)] is intended to apply to those insurance institutions whose rates and market orientation are directed at risks other than preferred or standard risks. To facilitate compliance with this Act, Commissioners should consider developing a list of insurance institutions operating in their state which specialize in substandard risks and make it known to insurance institutions and agents.

["Privileged Information"]: The phrase "in reasonable anticipation of a claim" contemplates that the insurance institution has knowledge of a loss but has not received formal notice of the claim.

Compiler's Comments

2003 Amendment: Chapter 385 in definition of insurance function after "fraud investigation" inserted "fraud prevention" and at end after "policyholder service functions" inserted reference to technical, administrative, or professional services; in definition of separate, written authorization at end of (a) substituted "33-19-306(10), (11), (14), (15), and (17)" for "33-19-306(3) through (22)"; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 7(2), Ch. 385, L. 2003, provided that this section is effective January 1, 2004, and applies to policies issued or renewed on or after January 1, 2004.

2001 Amendment: Chapter 341 in definition of insurance function after "peer review activities" inserted "subrogation" and after "grievance procedures" inserted "insurance transactions"; inserted definition of licensee; in definition of separate, written authorization in (a) substituted "33-19-306(3) through (22)" for "33-19-306(3) through (17)", in (b) after "organization" deleted "pursuant to 33-19-204", and deleted former (b) that read: "(b) The term does not include the insurance institution, insurance producer, or insurance-support organization that discloses personal or privileged information pursuant to 33-19-306(3) through (17)"; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

Source: The 2001 amendments to this section are based on Section 4 of the Privacy of Consumer Financial and Health Information Regulation Model Act, drafted by the National Association of Insurance Commissioners, as adopted in September 2000.

1999 Amendment: Chapter 212 inserted definition of insurance function; in definition of medical record information in (a) inserted "medical claims history"; inserted definition of separate, written authorization; and made minor changes in style. Amendment effective January 1, 2000.

1997 Amendments — Composite Section: Chapter 42 in definition of medical professional substituted "speech-language pathologist" for "speech therapist"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 258 in definition of insurance-support organization, in (a) after "person who", substituted "assembles or collects" for "regularly engages, in whole or in part, in the practice of assembling or collecting" and before "purpose" deleted "primary" and in (b), after "government institutions", deleted "insurance institutions"; in definition of privileged information, in (a) after "relates to a", deleted "claim for insurance benefits or a"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent and substituted references to insurance producer for references to enrollment representative. Amendment effective January 1, 1990.

Commissioner Correction: As enacted by sec. 4, Ch. 580, L. 1981, subsection (23) of this section contained a reference to 33-8-103. Title 33, chapter 8, terminated on December 31, 1981 (See sec. 1, Ch. 134, L. 1979). The Code Commissioner has removed the reference under authority of 1-11-101(2)(g)(ii).

Source: Section 2, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-105. Exemption based on federal standards for privacy of individually identifiable health information — notice to commissioner required — rules.

Compiler's Comments

2017 Amendment: Chapter 151 in (1)(a) after "privacy regulations must be delivered" deleted "annually". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2009 Amendment: Chapter 271 in (7) in introductory clause substituted "July 1, 2011" for "July 1, 2009". Amendment effective July 1, 2009.

2007 Amendment: Chapter 399 in (1) near end after "health information" inserted "or security standards for the protection of electronic health information" and after "privacy" inserted "and security"; in (5) in first sentence at beginning substituted "business associate, as defined in the HIPAA privacy regulations, 45 CFR 160.103" for "third-party administrator" and in second sentence near beginning substituted "business associate" for "third-party administrator"; in (7) substituted "2009" for "2007"; in (7)(a) after "privacy" inserted "and security"; and made minor changes in style. Amendment effective May 3, 2007.

2005 Amendment: Chapter 469 in (1) at beginning deleted "Beginning on April 17, 2003"; in (7) after "July 1" substituted "2007" for "2005"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 385 in (1) substituted language exempting licensees based on federal standards for privacy of individually identifiable health information for former language that read: "(1) If a licensee is subject to and in compliance with a federal rule that is part of the federal health insurance portability and accountability privacy rules, 45 CFR, parts 160 and 164, and the federal rule with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter"; inserted (2) allowing commissioner to adopt rules regarding exceptions from exemption provisions; in (3) at end after "exemption" inserted requirement of descriptive statement and deleted former second sentence that read: "The notice must include a statement of the reason for the claimed exemption"; inserted (4) limiting lines of business eligible for exemption; inserted (5) relating to exemption eligibility for third-party administrators; inserted (6) allowing commissioner to conduct complete market conduct examinations of licensees; inserted (7) relating to compliance after July 1, 2005; and made minor changes in style. Amendment effective April 17, 2003.

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

Effective Date: Section 14(1), Ch. 341, L. 2001, provided that this section is effective July 1, 2001.

33-19-106. Rulemaking authorized.

Compiler's Comments

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

Effective Date: Section 14(2), Ch. 341, L. 2001, provided that this section is effective on passage and approval. Approved April 21, 2001.

Part 2
Information Gathering

33-19-201. Pretext interviews prohibited — exception.

Commission Notes

Some states may desire to eliminate the exception in this section and thereby prohibit pretext interviews in all instances. Other states may desire to broaden the exception so that pretext interviews can be utilized in underwriting and rating situations as well as claim situations.

States may either expand or limit the prohibition against pretext interviews suggested in this section to accommodate their individual needs and circumstances. Deviation from the standard developed here should not seriously undermine efforts to achieve uniform rules for insurance information practices throughout the various states. [Annotator's Note: Montana's provision differs from the model only in arrangement and by substituting "specific" for "scientific" before "information available for review" in the middle of (2).]

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 3, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

Attorney General's Opinions

Original Documents Submitted to Retirement Division Not Subject to Public Inspection for Mailing List Purposes: Original documents submitted by applicants to the Public Employees' Retirement Division of the Department of Administration contain private information about third parties and thus are not open to public inspection for the purpose of compiling a mailing list. 42 A.G. Op. 64 (1988).

33-19-202. Notice of insurance information practices — delivery of notice.

Commission Notes

If permitted under [subsection (1)], an insurance institution may include notice in the insurance policy or certificate.

Compiler's Comments

2017 Amendment: Chapter 151 in (1)(a)(ii) substituted current language for "at least annually, the 12-month period for which may be defined by the insurance institution and must be used consistently. The notice to certificate holders required in this subsection (1)(a)(ii) is not required if the insurance institution has not had any communication, including receiving a claim, from a certificate holder since the initial or last annual notice provided to the certificate holder"; deleted former (1)(a)(iii) that read: "(iii) in the case of a policy renewed after July 1, 2001, no later than the policy renewal date, except that notice is not required in connection with a policy renewal if a notice meeting the requirements of this section has been given within the previous 12 months"; in (4) substituted "any subsequent notice" for "any subsequent annual notice if the policy renews periodically"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2003 Amendment: Chapter 385 in introductory clause after "collected" inserted "and disclosed"; deleted former (1)(a)(iii)(A) that read: "(A) personal information is collected only from the policyholder or from public records"; at end of (1)(b) after "reinstatement" deleted "except that notice is not required if personal information is collected only from the policyholder or from public records"; in (4) inserted introductory clause referring to certain information required in initial notice and subsequent annual notices; near end of (4)(b) after "from" inserted "or discloses personal information to"; in (4)(c) after "information" inserted reference to 33-19-301 and after "33-19-306" substituted "and 33-19-307" for "that must include"; deleted former (4)(h)(i) through (4)(h)(iii) that read: "(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 3 years;

(ii) the date of the receipt or examination; and

(iii) to the extent practicable, a description of the information disclosed"; in (5)(b) substituted "33-19-306(3) through (24)" for "33-19-306(3) through (22)"; in (9) at beginning deleted "If a licensee is required to provide notice concerning privacy in addition to the notice required by this section", at end of second sentence after "used" substituted language requiring referral to state specific notice forms for "a notice containing provisions specific to Montana must conspicuously refer to any other notice form", and inserted last sentence requiring notice of protection under more protective state law; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 7(2), Ch. 385, L. 2003, provided that this section is effective January 1, 2004, and applies to policies issued or renewed on or after January 1, 2004.

2001 Amendment: Chapter 341 at beginning substituted "A licensee" for "An insurance institution or insurance producer", before "notice" inserted "clear and conspicuous", and after "practices" substituted "that accurately reflects its privacy policies and practices to individuals about whom personal information is collected by the licensee" for "to all applicants or policyholders";

in (1)(a) at beginning inserted exception clause, substituted "a policyholder or certificate holder" for "an application for insurance", and after "must be" substituted "delivered by an insurance institution" for "provided no later than"; in (1)(a)(i) at beginning inserted "in the case of policies issued after July 1, 2001, no later than" and after "certificate" substituted "unless the notice delivered to the policyholder or certificate holder pursuant to subsection (4)(a) when the policy holder or certificate holder was an applicant is still accurate" for "when personal information is collected only from the applicant or from public records"; substituted (1)(a)(ii) providing notice must be delivered at least annually for the defined 12-month period and providing an exception to the required notice provision for former (1)(a)(ii) that read: "(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records"; in (1)(a)(iii) substituted "policy renewed after July 1, 2001" for "policy renewal, a notice must be provided"; in (1)(a)(iii)(B) decreased notice time from 24 months to 12 months; in (1)(b) at beginning substituted language regarding delivery of new or revised notice when new insurance product or policy is reinstated and existing notice inaccurate for "in the case of a policy reinstatement or change in insurance benefits, a notice must be provided" and after "time" substituted "that the product or service is provided by the licensee or at the time of reinstatement" for "a request for a policy reinstatement or change in insurance benefits is received by the insurance institution"; inserted (2) providing that insurance institution is not required to meet notice requirements until institution has personally identifiable information and prohibiting third-party administrator, agent, or other institution representative from disclosing personal information, except that allowed under 33-19-306(2), until notice requirements met; in (3)(a) at beginning substituted "the categories of personal information" for "whether personal information" and after "individuals" substituted "covered" for "proposed for coverage"; substituted language in (3)(b) providing that notice include separate description of categories of third parties receiving personal information if licensee discloses personal or privileged information to third party without authorization under exception in 33-19-306 or 33-19-307 for former (3)(b) that read: "(b) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect the information"; in (3)(c) substituted language providing that notice include categories of personal information disclosed about former policyholder or certificate holder under 33-19-306 and 33-19-307 and categories of persons to whom disclosure made for former (2)(c) that read: "(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), and (14) of 33-19-306 and the circumstances under which the disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described"; inserted (3)(d) requiring notice to state any licensee disclosure made pursuant to the Fair Credit Reporting Act; inserted (3)(e) requiring notice to include licensee's policies and practices on protecting confidentiality and security of personal and privileged information; in (3)(g) after "persons" inserted "if the licensee collects or uses information from an insurance-support organization"; inserted (3)(h) outlining notice requirements that individual, upon request, is entitled to receive a record of subsequent disclosures of medical record information by licensee; deleted former (3) introductory language that read: "(3) In lieu of the notice prescribed in subsection (2), the insurance institution or insurance producer may provide an abbreviated notice informing the applicant or policyholder that"; inserted (4) outlining notice requirements for individuals who are not policyholders or certificate holders and authorizing abbreviated notice form; in (4)(b)(iv) in first sentence after "furnished" deleted "to the applicant or policyholder" and inserted second sentence requiring explanation of reasonable means for obtaining abbreviated notice; in (5) and (5)(a) substituted "licensee" for "insurance institution or insurance producer"; inserted in (5)(b) providing that obligations may be satisfied by sending notice to primary policyholder or certificate holder; inserted (6) outlining requirements for providing actual notice in writing or electronically if recipient agrees; inserted (7) authorizing insurance institution to provide notice telephonically for application submitted by telephone and authorizing abbreviated notice; inserted (8) authorizing licensee to satisfy notice requirements through combined or separate notices and requiring notice to contain specific provisions if more than one form is used; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

Source: The 2001 amendments to this section are based on Section 7 and 10 of the Privacy of Consumer Financial and Health Information Regulation Model Act, drafted by the National Association of Insurance Commissioners, as adopted in September 2000.

1999 Amendment: Chapter 212 in (2)(c) deleted references to subsections (13) and (15) of 33-19-306 and inserted reference to subsection (14) of that section; and made minor changes in style. Amendment effective January 1, 2000.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 4, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-203. Marketing and research surveys.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 5, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-205. Investigative consumer reports.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 7, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-206. Disclosure authorizations — content — conditions prohibited.

Compiler's Comments

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

Effective Date: Section 14(1), Ch. 341, L. 2001, provided that this section is effective July 1, 2001.

Source: The amendments to this section are based on Section 18 of the Privacy of Consumer Financial and Health Information Regulation Model Act, drafted by the National Association of Insurance Commissioners, as adopted in September 2000.

Part 3
Disclosure of Information

33-19-301. Access to recorded personal information.

Compiler's Comments

2003 Amendment: Chapter 385 at beginning of (1)(c) inserted exception clause; inserted (2) requiring licensee to provide record of certain disclosures of medical record information; in (7) in first sentence after "maintained" inserted "and disclosed" and at end of second sentence inserted exception clause; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 7(2), Ch. 385, L. 2003, provided that this section is effective January 1, 2004, and applies to policies issued or renewed on or after January 1, 2004.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Effective Date: Section 27, Ch. 580, L. 1981, provided: "(1) This act is effective on July 1, 1982.
(2) The rights granted under 33-19-301, 33-19-302, and 33-19-306 are effective on July 1, 1982, regardless of the date of the collection or receipt of the information that is the subject of those sections."

Source: Section 8, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-302. Correction, amendment, or deletion of recorded personal information.

Compiler's Comments

1997 Amendment: Chapter 258 inserted (5) regarding correction, amendment, or deletion of erroneous recorded personal information; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Effective Date: Section 27, Ch. 580, L. 1981, provided: "(1) This act is effective on July 1, 1982. (2) The rights granted under 33-19-301, 33-19-302, and 33-19-306 are effective on July 1, 1982, regardless of the date of the collection or receipt of the information that is the subject of those sections."

Source: Section 9, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-303. Reasons for adverse underwriting decisions.

Commission Notes

The exception in [subsection (2)(b)(i)] to the obligation of an insurance institution or agent to furnish the specific items of personal and privileged information that support the reasons for an adverse underwriting decision extends only to information about criminal activity, fraud, material misrepresentation or material nondisclosure that is privileged information and not to all information.

Compiler's Comments

1997 Amendment: Chapter 258 in (4), at end, inserted "but must be made in writing at the request of the applicant, policyholder, or individual"; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 10, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-304. Information concerning previous adverse underwriting decisions.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1983 Amendment: At end of (1), after "individual" inserted "unless" clause; and in (2) after "requests" deleted "the reasons for any previous adverse underwriting decision or" and inserted clause at end after "mechanism".

Source: Section 11, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-305. Previous adverse underwriting decisions.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 12, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-306. Disclosure limitations and conditions.

Compiler's Comments

2009 Amendment: Chapter 413 inserted (7)(c) allowing disclosure as provided in 61-6-157; and made minor changes in style. Amendment effective October 1, 2009.

The amendment to this section by sec. 4, Ch. 387, L. 2009, was rendered void by sec. 28, Ch. 413, L. 2009, a coordination section.

2003 Amendment: Chapter 385 at end of (4)(a)(ii) after "function" deleted "in connection with an insurance transaction involving an individual"; at end of (6)(a) after "authority" deleted "that agrees not to further disclose the information without the individual's separate, written authorization"; in (14) at beginning of first sentence deleted "Notwithstanding any other provision of this section", at beginning of second sentence before "information" inserted "Medical record", and inserted last sentence exempting employer audits; in (19) before "information" inserted "or privileged"; inserted (20) authorizing disclosure of certain nonmedical information to lienholder, mortgagee, assignee, or lessor; inserted (21) allowing limited disclosure to other entities for rating and compliance purposes; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 7(2), Ch. 385, L. 2003, provided that this section is effective January 1, 2004, and applies to policies issued or renewed on or after January 1, 2004.

2001 Amendment: Chapter 341 in (1), (4)(a)(ii), and (7)(a) substituted reference to licensee for reference to an insurance institution, insurance producer, or insurance-support organization; in (2) after "individual" substituted second sentence requiring authorization to be in form prescribed in 33-19-206 for former (2)(a) and (2)(b) that read: "(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or

(b) if the authorization is submitted by a person other than an insurance institution, insurance producer, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual;

(iii) sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed; and

(iv) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection"; in (3) in first sentence after "Disclosure" inserted "limited to that which is reasonably necessary" and after "person" substituted "to enable the person to provide information to the disclosing licensee for the purpose of" for former language that read: "other than an insurance institution, insurance producer, or insurance-support organization, provided that the disclosure is limited to that which is reasonably necessary:

(a) to enable the person to perform an insurance function for the disclosing insurance institution, insurance producer, or insurance-support organization and the person agrees not to further disclose the information without the individual's separate, written authorization; or

(b) to enable the person that has agreed not to further disclose the information without the individual's separate, written authorization to provide information to the disclosing insurance institution, insurance producer, or insurance-support organization for the purpose of:

(i) determining an individual's eligibility for an insurance benefit or payment" and inserted second sentence requiring person receiving disclosed information to agree in writing not to further disclose certain information; in (4)(a) after "made" substituted "between licensees" for "to an insurance institution, insurance producer, insurance-support organization, or self-insurer that has agreed not to further disclose the information without the individual's separate, written authorization"; inserted (4)(b) prohibiting licensee receiving information from further disclosing information unless permitted by section; in (5) after "professional" inserted "or the individual to whom the information pertains if"; inserted (5)(d) authorizing disclosure if information reasonably necessary to determine reasonableness or necessity of medical services; inserted (6)(b) and (6)(c) requiring disclosure to be made to commissioner according to law; in (7) after "made" inserted "by a licensee or an insurance-support organization" and after "authority" inserted "or to an insurance regulatory agency"; in (7)(a) after "preventing" inserted "investigating"; in (7)(b) substituted "licensee or insurance-support organization" for "insurance institution, insurance producer, or insurance-support organization"; in (11) after "proposed" deleted "or consummated" and substituted "licensee" for "insurance institution, insurance producer"; in (12)(a) substituted "a licensee's affiliate" for "any affiliate"; in (12)(a)(i) at beginning inserted "to allow" and substituted "licensee" for "insurance institution or insurance producer if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons"; inserted (12)(a)(ii) and (12)(a)(iii) allowing disclosure under certain circumstances; in (12)(b) substituted language requiring written agreement with affiliate prohibiting use or further disclosure of information except to carry out purposes of section and providing that disclosure allowed by 33-19-307 is governed by that section for former language that read: "(b) Disclosure of personal information that is limited to an individual's name, age, sex, family composition, address, telephone number, occupation, and avocations may be made to any affiliate whose only use of the information is in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons"; in (13) substituted language limiting insurance-support organization disclosure to that reasonably necessary to perform insurance-support services for licensee and authorizing redisclosure to the extent necessary to provide member, subscriber, or insurance-support organization services, excluding marketing purposes, for "Except for medical record information, disclosure may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer"; in (14) in first sentence inserted "Notwithstanding any other provision of this section" and before "operations" substituted "licensee's" for "insurance institution's or insurance producer's" and inserted second sentence requiring information disclosed to be edited to prevent identification of applicant, policyholder, or certificate holder; in (17) inserted second sentence prohibiting disclosure to a group policyholder without separate, written authorization; inserted (18) authorizing disclosure to person contractually engaged to provide services for performance of insurance function for limited purposes; inserted (19) outlining when licensee may disclose personal information to perform insurance function; inserted (20) authorizing disclosure for marketing purposes only as allowed by 33-19-307; inserted (21) concerning disclosure of personal information discoverable pursuant to Montana Rules of Civil Procedure; in (22) in first sentence after "may" deleted "after notice and hearing" and after "rules" substituted language regarding creating additional exceptions to disclosure restrictions for necessary insurance function for former language that read: "to carry out the provisions of this section. The rules may not define the recordkeeping requirements regarding authorized disclosures of personal or privileged information pursuant to subsections (2) through (17) but may define the requirements of any agreement obtained by an insurance institution, insurance producer, or insurance-support organization regarding disclosures of personal or privileged information" and inserted second sentence requiring commissioner to adopt rules to prevent personal identification; and made minor changes in style. Amendments to subsections (1) through (21) effective July 1, 2001. Amendment to subsection (22) effective April 21, 2001.

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

1999 Amendment: Chapter 212 inserted (2)(b)(iii) that read: "sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed"; in (3) after "disclosure is" inserted "limited to that which is"; in (3)(a) after "perform" substituted "an" for "a business, professional, or", inserted "separate", and at end deleted "unless the further disclosure: (i) would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance support organization; or

(ii) is reasonably necessary for such person to perform its function for the disclosing insurance institution, insurance producer, or insurance support organization"; in (3)(b) and (4) inserted "that has agreed not to further disclose the information without the individual's separate, written authorization"; in (6) inserted "that agrees not to further disclose the information without the individual's separate, written authorization"; in (8) and (9) inserted "that is limited to that which is reasonably necessary"; in (10) at beginning substituted "(a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary" for "Disclosure"; in (10)(a)(iii) inserted "further" and substituted "without the individual's separate, written authorization" for "unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance support organization"; inserted (10)(b) allowing disclosure for health research that is subject to review board approval and federal law or for epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect patients' identity; in (11)(b) inserted "further" and substituted "without the individual's separate, written authorization" for "unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance support organization"; deleted former (12) that read: "(12) Disclosure may be made to a person whose only use of such information will be in connection with the marketing of a product or service, if:

(a) no medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed;

(b) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed; and

(c) the person receiving the information agrees not to use it except in connection with the marketing of a product or service"; in (12)(a) inserted "that is limited to that which is reasonably necessary" and after "insurance producer" deleted "or the marketing of an insurance product or service"; inserted (12)(b) providing that disclosure limited to name, age, sex, family composition, address, telephone number, occupation, and avocations may be made to an affiliate that agrees to use the information only in connection with marketing; in (13) at beginning inserted exception clause; in (14) at end inserted "and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization"; in (15) inserted "that is limited to that which is reasonably necessary" and at end inserted "if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization"; in (16) inserted "that is limited to that which is reasonably necessary" and inserted "as required by federal or state law or"; in (17) inserted "that is limited to that which is reasonably necessary"; inserted (18) allowing the commissioner to adopt rules to carry out this section; and made minor changes in style. Amendment effective January 1, 2000.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Effective Date: Section 27, Ch. 580, L. 1981, provided: "(1) This act is effective on July 1, 1982. (2) The rights granted under 33-19-301, 33-19-302, and 33-19-306 are effective on July 1, 1982, regardless of the date of the collection or receipt of the information that is the subject of those sections."

Source: Section 13, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-307. Personal information used for marketing purposes — restrictions.

Compiler's Comments

2003 Amendment: Chapter 385 in (4) in second sentence after "maintain" deleted "and monitor"; in (5) substituted "subsections (2) through (4)" for "subsections (2) and (3)", after "individual's" substituted "written authorization as described in 33-19-306(2)" for "separate written authorization"; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 7(2), Ch. 385, L. 2003, provided that this section is effective January 1, 2004, and applies to policies issued or renewed on or after January 1, 2004.

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

Effective Date: Section 14(1) provided that this section is effective July 1, 2001.

33-19-308. Disclosure of underwriting information.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

33-19-321. Computer security breach.

Compiler's Comments

2015 Amendment: Chapter 62 inserted (5) concerning electronic copies for the commissioner; inserted (6)(b)(i)(D), (6)(b)(i)(E), and (6)(b)(i)(F) concerning medical record information, taxpayer identification number, and United States internal revenue service personal identification number; and made minor changes in style. Amendment effective October 1, 2015.

2007 Amendment: Chapter 180 in (5)(b)(i)(B) after "state identification" inserted "card" and at end inserted "or tribal identification card number"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 11, Ch. 518, L. 2005, was a severability clause.

Effective Date: Section 12(1), Ch. 518, L. 2005, provided that this section is effective March 1, 2006.

Part 4
Enforcement

33-19-401. Power of the commissioner.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 14, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-403. Service of process — insurance-support organizations.

Compiler's Comments

2019 Amendment: Chapter 60 in second sentence inserted "party seeking service and the" and substituted "follow the procedure in 33-1-606 to effectuate service" for "mail a copy of the notice by registered mail to the insurance-support organization at its last-known principal place of business. The return postcard receipt for such mailing is sufficient proof that the same was properly mailed by the commissioner". Amendment effective July 1, 2019.

Source: Section 16, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-405. Civil penalty.

Compiler's Comments

2001 Amendment: Chapter 341 substituted language subjecting person violating chapter to civil penalty provided in 33-1-317 for former language that read: "If a hearing pursuant to 33-19-402 results in the finding of a knowing violation of this chapter, the commissioner may order payment of a civil penalty of not more than $500 for each violation but not to exceed $10,000 in the aggregate for multiple violations." Amendment effective July 1, 2001.

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

1985 Amendment: After "the commissioner may", deleted "in addition to the issuance of a cease and desist order as prescribed in 33-19-404"; and deleted former (2) that read: "Any person who violates a cease and desist order of the commissioner under 33-19-404 may, after notice and hearing and upon order of the commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

(a) a civil penalty of not more than $10,000 for each violation; or

(b) a civil penalty of not more than $50,000 if the commissioner finds that violations have occurred with such frequency as to constitute a general business practice; and

(c) suspension or revocation of an insurance institution's or agent's license."

Source: Section 18, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-407. Individual remedies.

Compiler's Comments

2001 Amendment: Chapter 341 in (2) in two places inserted reference to 33-19-307; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 13, Ch. 341, L. 2001, was a severability clause.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 20, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-408. Immunity.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 21, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

33-19-409. Obtaining information under false pretenses.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 22, Insurance Information and Privacy Protection Model Act, drafted by the National Association of Insurance Commissioners, as revised December 1981. This act has been enacted in Arizona, California, Connecticut, Illinois, Kansas, Nevada, and Virginia.

CHAPTER 20
LIFE INSURANCE

Part 1
Policy Provisions

Part Case Notes

First Premium — Acceptance — Creation of Insurance Contract: The acceptance by an insurance company of a first premium on a life insurance policy may have the effect of creating a temporary contract of insurance when the language in the premium receipt or acts by the insurance agent would lead the applicant to believe that the insurance was effective immediately or when there is unequal bargaining power between the applicant and the insurer. Hildebrandt v. Wash. Nat'l Ins. Co., 181 M 231, 593 P2d 37 (1979).

33-20-101. Scope.

Compiler's Comments

2003 Amendment: Chapter 380 in (2) before "group annuities" inserted references to 33-20-114, 33-20-124, and 33-20-150; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 76 in (2) inserted reference to 33-20-150; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 531 in (2), after "33-20-131", inserted "also".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1993 Amendment: Chapter 451 at beginning of (2) inserted reference to 33-20-114; and made minor changes in style.

1991 Amendment: At beginning of (1) inserted exception clause; and inserted (2) applying 33-20-131 to group life insurance and group annuities.

1981 Amendment: Substituted "Parts 1 through 5" for "Parts 1 through 4".

Case Notes

Annuity Contract Considered Investment, Not Life Insurance: Miles invested $30,000 in a tax-deferred variable annuity contract. After Mile's death, the plaintiffs demanded one-half of the annuity investment on grounds that the annuity was life insurance that they were entitled to under Miles' will. The District Court denied their demand, holding that the annuity contract did not constitute insurance under Montana law. On appeal, the heirs cited In re Fligman's Estate, 113 M 505, 129 P2d 627 (1942), for the proposition that because annuity contracts were considered insurance for inheritance tax purposes in that case, it followed that annuity contracts have to be considered insurance for all purposes. The Supreme Court held that because the annuity contract in Miles' case did not involve indemnification, loss, damage, liability, or contingent events, it was an investment, not insurance, and the District Court did not err in so holding. In re Estate of Miles v. Miles, 2000 MT 41, 298 M 312, 994 P2d 1139, 57 St. Rep. 191 (2000).

33-20-103. Standard provisions required — exceptions.

Compiler's Comments

2003 Amendment: Chapter 380 at end of (2) inserted last sentence exempting annuity contracts from 33-20-114; and made minor changes in style. Amendment effective October 1, 2003.

1987 Amendment: At end of (1) deleted reference to 33-20-109 and inserted reference to 33-20-131.

33-20-104. Grace period.

Case Notes

Premium Payment Condition — Time of Essence of Contract: The condition in a policy of life insurance that the policy shall cease if the stipulated premium shall not be paid on or before the day fixed was of the very essence and substance of the contract, against which even a court of equity could not grant relief. Conlon v. N. Life Ins. Co., 108 M 473, 92 P2d 284 (1939).

33-20-105. Incontestability.

Compiler's Comments

2005 Amendment: Chapter 469 substituted (2)(a) and (2)(b) concerning life insurance coverage issued as result of an exchange or conversion for former (2) that read: "(2) A policy issued in connection with an exchange or a conversion is incontestable from the time of issue"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 380 inserted (2) providing that policy issued in connection with exchange or conversion is incontestable from time of issue; and made minor changes in style. Amendment effective October 1, 2003.

33-20-106. Entire contract.

Case Notes

Warranty: A "warranty" in a life insurance policy must be part and parcel of the contract, made so by express agreement of the parties upon the face thereof, and where a warranty is found to have been violated, it is unnecessary to determine the legal effect of an alleged fraudulent representation. Schroeder v. Metropolitan Life Ins. Co., 103 M 547, 63 P2d 1016 (1936).

33-20-112. Reinstatement.

Compiler's Comments

1985 Amendment: Near end of introductory clause inserted "on all premiums in arrears" and "and with interest on any indebtedness at a rate as provided in 33-20-132 through 33-20-136".

33-20-114. Payment of claims — interest.

Compiler's Comments

2015 Amendment: Chapter 63 in (2) in second sentence near beginning inserted "monthly average" and "AA asset-backed". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2003 Amendment: Chapter 380 in (2) at end of second sentence after "death" inserted reference to rate stated in policy, whichever is greater, and in third sentence after "insurer" deleted "after October 1, 1985"; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: In (1), at beginning substituted "There shall be a provision, which may be made by endorsement, that when a claim is made upon the death" for "There shall be a provision that when a policy shall become a claim by the death" and at end deleted last sentence that read: "If an insurer shall specify a particular period prior to the expiration of which settlement shall be made, such period shall not exceed 2 months from the receipt of such proofs"; and inserted (2) requiring payment of interest.

Case Notes

Death by Pulmonary Aspiration as Accidental Within Context of Insurance Policy: The physician who examined Caster after he died testified that Caster had aspirated food, causing respiratory arrest and then cardiac arrest, which the physician characterized as accidental based on the absence of heart problems in Caster's medical history. Caster's insurance policy provided for payment of a benefit for loss of life due to an injury, which was defined as bodily injury caused solely by an accident. However, a definition of accident was not included in the policy. The trial court adopted the definition from 46 C.J.S. Insurance 863 (1993), finding that the common understanding of the term "contemplates something unanticipated, unforeseen, and unusual, without design, intention, or premeditation". Jefferson National Life Insurance Company contended that coverage did not extend to Caster because his death was not caused solely by accident, but produced no evidence that Caster's death was anything but unanticipated, unforeseen, and unusual, without design, intention, or premeditation. The estate met its burden of proving that Caster's death by aspiration was an accidental death covered by the policy. Ike v. Jefferson Nat'l Life Ins. Co., 267 M 396, 884 P2d 471, 51 St. Rep. 1097 (1994), distinguishing Brothers v. Gen. Motors Corp., 202 M 477, 658 P2d 1108 (1983).

Intoxication Exclusion Inapplicable Absent Evidence of Influence Upon Death: Caster's life insurance policy excluded coverage if death was caused in whole or in part, directly or indirectly, from the influence of any intoxicant. Evidence was submitted that Caster had been drinking the night before he died, but the physician who examined Caster after he died testified that Caster had aspirated food, causing respiratory arrest and then cardiac arrest. The insurance company bore the burden of proving that the exclusionary clause applied, but because of a lack of substantial credible evidence that the influence of alcohol had any relationship to Caster's death, the trial court properly held that the intoxication exclusion in the policy did not apply to Caster's accidental death. Ike v. Jefferson Nat'l Life Ins. Co., 267 M 396, 884 P2d 471, 51 St. Rep. 1097 (1994).

Death Resulting From Fall Caused by Loss of Consciousness — Accidental Death: Insured had coverage for injuries, including death, resulting directly, and independently of all other causes, from an accident and not resulting from disease. He had a history of losing consciousness caused by years of overindulgence in alcohol. This would not in itself have caused death, but he lost consciousness, fell, hit his head on a sidewalk, and died. The injury and death were accidental under the policy and were caused by his head hitting the sidewalk, not by his propensity to lose consciousness. Coverage under the policy was required. Pond v. N. Am. Life & Cas. Co., 215 M 428, 697 P2d 1360, 42 St. Rep. 515 (1985).

"Good Health" Clause — Coverage Not Precluded: "Good health" clause in application for life policy did not preclude recovery where insured suffered undiagnosed terminal cancer at the time of application and thus was unaware of illness. Friez v. Nat'l Old Line Ins. Co., 703 F2d 1093 (9th Cir. 1983).

Suicide — Question of Fact: Where insured did not make statements or take prior actions indicating his intent to commit suicide but there was no benign explanation for his handling of the gun, proper approach under Montana law was to allow jury as fact finder to decide whether insured intentionally killed himself and thus whether insurers were liable on two life insurance policies. Sankovich v. Life Ins. Co. of N. Am., 638 F2d 136 (9th Cir. 1981).

Death Certificate Binding Beneficiary: Where attending physician recited in death certificate that he treated insured some 6 weeks before date of policy and cause of death was heart disease and acute bronchitis and beneficiary adopted the certificate in making proof of death, the certificate makes out a prima facie case of the truth of the statements and is sufficient evidence to establish breach of warranty. Schroeder v. Metropolitan Life Ins. Co., 103 M 547, 63 P2d 1016 (1936).

33-20-115. Beneficiary — industrial policies.

Compiler's Comments

1985 Amendment: Inserted (5) requiring payment of interest by reference to the applicable section.

1981 Amendment: Substituted "personal representative" for "executor or administrator" in (3).

33-20-117. Nonforfeiture rights — policies issued before operative date.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-20-121. Prohibited provisions — limitations on liability.

Compiler's Comments

1999 Amendment: Chapter 472 in (1)(b)(v) after "suicide" deleted "while committed pursuant to 53-21-127"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 490 in (1)(b)(v), in first sentence after "suicide, while", substituted "committed pursuant to 53-21-127" for "seriously mentally ill or otherwise"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1993 Amendment: Chapter 451 near end of (2), before "with adjustment", inserted "or by any other method more favorable to the policyholder"; and made minor changes in style.

1991 Amendment: In (1)(b)(v) inserted second sentence allowing continued dependent coverage upon payment of the premium for a dependent rider; and made minor changes in style.

Case Notes

Provisions of Insurance Statutes to Be Read Into Policy — Arguably Nonconforming Suicide Payment Provision Not Voided: An insurance policy contained a suicide exclusion (see 1997 amendment) permitted by this section, but the payment provided to the beneficiary arguably did not comply with subsection (2) of this section. The beneficiary contended that a proper application of 33-15-315 to the policy resulted in invalidating the entirety of the suicide exclusion. The District Court determined that 33-15-315 required that the Insurance Commissioner's reserve value provision of subsection (2) of this section be read into the policy. The plain meaning of 33-15-315 is to give effect to insurance policies and provisions to the fullest extent possible by reading statutory provisions into the policy to achieve full compliance with the insurance code. Nothing in 33-15-315 supports applying it to invalidate policy provisions. The suicide exclusion contemplated some payment to the beneficiary in an amount much reduced from the total benefit amount. The arguably nonconforming payment provision did not render any portion of the policy invalid. Instead, the subsection (2) provision of this section was included in the policy so as to bring the entirety of the exclusion and the policy itself into compliance with the code. In light of the fact that the amount tendered to the beneficiary exceeded the amount required by utilizing the methodology contained in subsection (2) of this section, the District Court did not err in concluding that the subsection must be read into the policy to effectuate the provisions clearly contemplated by the parties. Sagan v. Prudential Ins. Co. of America, 259 M 506, 857 P2d 719, 50 St. Rep. 902 (1993).

Car Rental Accidental Death Policy as Disability Insurance: An insurance policy providing a renter of a car with coverage for accidental death arising from operation during the rental period was classified as disability insurance under 33-1-207, rather than life insurance under 33-1-208. Therefore, an "intoxicants exclusion" in the policy was not voided by the prohibition against such exclusions as related to life insurance policies under this section. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

33-20-127. Life insurance policy with long-term care provision or accelerated benefits provision — summary required.

Compiler's Comments

2007 Amendment: Chapter 32 in introductory paragraph in first sentence after "provides" deleted "long-term care benefits or" and inserted second sentence requiring a summary in a policy that provides long-term care benefits; and made minor changes in style. Amendment effective July 1, 2007.

1993 Amendment: Chapter 451 in introductory clause, in (1), and in (3) inserted reference to accelerated benefits; and made minor changes in style.

33-20-128. Life insurance policy paying long-term benefits — monthly report.

Compiler's Comments

2007 Amendment: Chapter 32 in introductory paragraph at end of first sentence inserted "as provided for in 33-22-1123 and this section". Amendment effective July 1, 2007.

1997 Amendment: Chapter 416 in first sentence, after "in benefit payment status, a", substituted "monthly" for "quarterly" and near beginning of second sentence inserted "the following information for the month for which the report is issued"; and in (1), at end, substituted "the month" for "each month of the quarter".

33-20-131. Policy loan or certificate loan.

Compiler's Comments

1991 Amendment: Throughout section, after reference to policy or policy year, inserted reference to certificate or certificate year; at beginning of (1) inserted reference to 33-20-101(2); and made minor changes in style.

1985 Amendment: Inserted exception at beginning.

33-20-141. Notice required for cancellation.

Compiler's Comments

2017 Amendment: Chapter 324 in (1) at beginning inserted "Subject to subsection (2)"; inserted (2) regarding designation of third party to receive notice of cancellation; and made minor changes in style. Amendment effective January 1, 2018.

33-20-142. Contents of notice — proof — limitation on recovery — exemptions.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-20-150. Life insurance policy and sales illustrations — annuity disclosure — rules.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Administrative Rules

Title 6, chapter 6, subchapter 7, ARM Life insurance illustrations.

Part 2
Standard Nonforfeiture Law
Life Insurance

Part Compiler's Comments

Source: This part is derived from the Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners. All states except Massachusetts, Missouri, and Rhode Island have adopted this law.

33-20-201. Short title.

Compiler's Comments

Source: Section 1, Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-202. Nonforfeiture provisions.

Compiler's Comments

1983 Amendment: In (1) at end of introductory clause, inserted language following "policyholder"; in (1)(a) near end of first sentence changed "value" to "amount" and inserted second sentence allowing substitution of an actuarially equivalent alternative paid-up nonforfeiture benefit; and in (1)(e) inserted first sentence referring to policies with unscheduled changes or options for changes and "For each other policy" at beginning of second sentence.

Source: Section 2, Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts and Missouri.

33-20-203. Cash surrender value — paid-up nonforfeiture benefit — life.

Compiler's Comments

2015 Amendment: Chapter 370 in (2) near beginning and in (5) near beginning before "operative date" inserted "relevant"; in (4) near middle substituted "the anniversary to the extent that the nonforfeiture benefit is at least equal" for "such anniversary shall be at least equal"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

1983 Amendment: At beginning of (1), inserted exception clause; in (1)(a), changed "through 33-20-207" to "through 33-20-208"; inserted (2) establishing cash surrender value of certain policies issued on or after the operative date of 33-20-208; and inserted (5) establishing cash surrender value of certain family policies issued on or after the operative date of 33-20-208.

Source: Sections 3 and 4, Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-204. Adjusted premium.

Compiler's Comments

1983 Amendment: Inserted (1) exempting policies issued on or after the operative date of 33-20-208.

Source: Section 5(part), Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-205. Calculation — mortality table — rates of interest.

Compiler's Comments

Source: Section 5(part), Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-206. Mortality tables — policies issued after operative date.

Compiler's Comments

1983 Amendment: Inserted (1) exempting policies issued on or after the operative date of 33-20-208.

Source: Section 5(a), Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-207. Industrial policies — mortality tables.

Compiler's Comments

1983 Amendment: Inserted (1) exempting policies issued on or after the operative date of 33-20-208.

Source: Section 5(b), Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-208. Mortality tables — interest rate adjusted premiums.

Compiler's Comments

2015 Amendment: Chapter 370 in (1)(a) near end inserted "The uniform percentage must represent"; in (4) near end inserted "The uniform percentage must be"; in (7) at beginning substituted "Adjusted premiums and present values for a substandard policy may be calculated as if the substandard policy were issued to provide higher uniform amounts of insurance on the standard basis, regardless of other provisions" for "Notwithstanding any other provisions" and at end deleted "adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis"; in (8)(f)(i) at beginning substituted "For policies issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409], any commissioner's standard ordinary mortality tables" for "Any ordinary mortality tables"; inserted (8)(f)(ii) relating to the commissioner using standard mortality table; inserted (8)(f)(iii) relating to a minimum nonforfeiture law adopted by the national association of insurance commissioners; in (8)(g)(i) at beginning inserted "For policies issued prior to the operative date of the valuation manual"; inserted (8)(g)(ii) requiring valuation manuals to provide the commissioner's standard mortality table; inserted (8)(g)(iii) relating to an adopted standard superseding the valuation manual's nonforfeiture standard; in (9)(a) at beginning inserted "For policies issued prior to the operative date of the valuation manual" and inserted last sentence relating to nonforfeiture interest rate requirements; inserted (9)(b) relating to interest rates for policies issued on or after the operative date of the valuation manual; in (10) at beginning deleted "Notwithstanding any other provision in this code to the contrary"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

Statement of Intent: The statement of intent attached to HB 592 (Ch. 498, L. 1983) provided: "A Statement of Intent is required for this bill in that it delegates rulemaking authority to the Commissioner of Insurance in Sections 6 and 7 [33-20-208 and 33-20-209].

Although 33-1-313, MCA, delegates to the Commissioner of Insurance rulemaking authority to effectuate any provisions of the Code, as this bill substantially increases this power, a Statement of Intent is required.

Section 6(8)(g) [33-20-208(8)(g)] empowers the Commissioner of Insurance to approve by regulation new mortality tables.

Section 7 [33-20-209] allows the Commissioner of Insurance to promulgate regulations pertaining to those plans of life insurance not included in the original Nonforfeiture Law. Such regulations would define minimum cash values and other nonforfeiture values."

Source: Section 5(c), Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

Administrative Rules

Title 6, chapter 6, subchapter 18, ARM Standard valuation and standard nonforfeiture.

33-20-209. Determination of nonforfeiture values for special plans.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 592 (Ch. 498, L. 1983) provided: "A Statement of Intent is required for this bill in that it delegates rulemaking authority to the Commissioner of Insurance in Sections 6 and 7 [33-20-208 and 33-20-209].

Although 33-1-313, MCA, delegates to the Commissioner of Insurance rulemaking authority to effectuate any provisions of the Code, as this bill substantially increases this power, a Statement of Intent is required.

Section 6(8)(g) [33-20-208(8)(g)] empowers the Commissioner of Insurance to approve by regulation new mortality tables.

Section 7 [33-20-209] allows the Commissioner of Insurance to promulgate regulations pertaining to those plans of life insurance not included in the original Nonforfeiture Law. Such regulations would define minimum cash values and other nonforfeiture values."

Source: Section 6, Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-210. Additional rules for calculating cash surrender values.

Compiler's Comments

Source: Section 8, Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-211. Calculation of values — other requisites.

Compiler's Comments

1983 Amendment: In (2), changed "through 33-20-207" to "through 33-20-208"; in (3) substituted "amounts" for "dividends"; and in (4) substituted "(3) of 33-20-203" for "(2) of 33-20-203".

Source: Section 7, Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-212. Exceptions.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1983 Amendment: In (1)(e), after "uniform amount" inserted "that provides no guaranteed nonforfeiture or endowment benefits,", changed "15" to "20", and changed "66" to "71"; in (1)(f), after "decreasing amount" inserted "that provides no guaranteed nonforfeiture or endowment benefits,", changed "through 33-20-207" to "through 33-20-208", before "policy" inserted "term", after "policy" inserted "of uniform amount . . . . endowment benefits,", substituted remainder of sentence after "insurance" for "for a term defined as follows"; deleted former subsections (1) and (2), which read: "(1) For ages at issue 50 and under, the term shall be 15 years. (2) Thereafter the term shall decrease 1 year for each year of age beyond 50."; inserted (1)(g) referring to policies with cash surrender values or paid-up nonforfeiture benefits not exceeding 2.5% of amount of insurance; inserted (1)(h) referring to policies delivered outside this state; and inserted (2) establishing method of calculation of age at expiry for joint term life policy.

Source: Section 9, Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

33-20-213. Operative date.

Compiler's Comments

Source: Section 10, Standard Nonforfeiture Law for Life Insurance, promulgated by the National Association of Insurance Commissioners and adopted in all states except Massachusetts, Missouri, and Rhode Island.

Part 3
Annuity Contract Provisions

Part Administrative Rules

Title 6, chapter 6, subchapter 8, ARM Annuities.

33-20-303. Incontestability.

Compiler's Comments

1991 Amendment: Near beginning, after "age", deleted "sex".

33-20-305. Misstatement of age.

Compiler's Comments

1991 Amendment: In two places, after "age", deleted "or sex".

33-20-308. Annuity information.

Compiler's Comments

1997 Statement of Intent: The statement of intent attached to Ch. 260, L. 1997, provided: "The intent of this bill is to require the commissioner of insurance to promulgate rules prescribing information that must be delivered to prospective annuitants at the time of sale. The rules must set forth the manner in which and by whom the information must be delivered. The rules must require that the prospective annuitant be informed of the type of annuity being sold and the settlement options available under the annuity contract."

33-20-309. Annuity penalty — 10-year prohibition.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

Applicability: Section 4, Ch. 177, L. 2017, provided: "[This act] applies to annuity contracts issued or renewed on or after [the effective date of this act]." Effective October 1, 2017.

Part 5
Standard Nonforfeiture Law Individual Deferred Annuities

Part Compiler's Comments

Incorporation Into the Montana Insurance Code: Sections 33-20-501 through 33-20-513 were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of the Montana Insurance Code, Title 33, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in Title 33.

Source: Part 5, Standard Nonforfeiture Law for Individual Deferred Annuities, promulgated by the National Association of Insurance Commissioners and adopted in Alabama, Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

33-20-502. Application.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-20-505. Minimum nonforfeiture amounts.

Compiler's Comments

2021 Amendment: Chapter 471 in (3)(a)(ii) at end substituted "0.15%" for "1%". Amendment effective July 1, 2021.

2005 Amendment: Chapter 66 in (2)(a) at beginning deleted "With respect to contracts providing for flexible considerations" and near middle after "time at" substituted "rates of interest as indicated in subsection (3)(a) of the net considerations, as described in subsection (2)(b)" for "a rate of interest of 3% a year of percentages of the net considerations (as hereinafter defined)"; in (2)(a)(i) at end substituted "rates of interest as indicated in subsection (3)(a)" for "a rate of interest of 3% a year"; inserted (2)(a)(ii) providing that an annual contract charge be figured into the total decrease; inserted (2)(a)(iii) providing that any premium tax paid by the company be figured into the total decrease; in (2)(a)(iv) at end after "accrued" deleted "and increased by existing additional amounts credited by the company to the contract"; in (2)(b) near beginning after second "amount" substituted "equal to 87.5% of" for "not less than zero and shall be equal to" and at end after "year" deleted remainder of (2)(b) that read: "less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year. The percentages of net consideration shall be 65% of the net consideration for the first contract year and 87½% of the net consideration for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%"; substituted (3) and (4) regarding calculation of the interest rate used in determining minimum nonforfeiture amounts for former (3) and (4) (see 2005 Session Law for text); and made minor changes in style. Amendment effective July 1, 2005.

Saving Clause: Section 2, Ch. 66, L. 2005, was a saving clause.

Effective Date —Applicability: Section 3, Ch. 66, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to an annuity contract that is entered into or renewed on or after July 1, 2005."

2003 Amendment: Chapter 512 in (2)(a) in two places decreased annual interest rate from 3% to 1.5%; and made minor changes in style. Amendment effective April 24, 2003, and terminates July 1, 2005.

Applicability: Section 3, Ch. 512, L. 2003, provided: "[This act] applies to annuity contracts that are entered into on or after July 1, 2003."

Part 6
Variable Contracts

Part Compiler's Comments

Saving Clause: Section 9, Ch. 112, L. 1989, was a saving clause.

Severability: Section 10, Ch. 112, L. 1989, was a severability clause.

Source: This part is based on the National Association of Insurance Commissioners Model Variable Contract Law.

33-20-602. Powers of commissioner.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 112, L. 1989, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the commissioner of insurance in [section 5] [33-20-602].

Although 33-1-313 delegates to the commissioner of insurance rulemaking authority to effectuate any provisions of the code, this bill substantively increases this power, necessitating a statement of intent.

[Section 5] [33-20-602] empowers the commissioner of insurance with the sole authority to regulate the issuance and sale of variable contracts and allows the commissioner to promulgate rules to carry out the provisions of this bill. The commissioner's authority to promulgate rules is limited in scope to the following areas:

(1) rules relating to maintaining reserves for guaranteed benefits and funds in a separate account;

(2) rules relating to valuation of assets allocated to a separate account;

(3) rules relating to the transfer of cash or securities among a life insurance company's accounts; and

(4) rules relating to the requirements of doing business under this bill.

All rules promulgated under this bill are subject to the provisions of the Montana Administrative Procedure Act."

33-20-603. Separate accounts for life insurance or annuities.

Compiler's Comments

1999 Amendment: Chapter 304 in (2)(b)(i) substituted reference to chapter 12 for reference to chapter 2, part 8, and substituted "33-12-208 or 33-12-308" for "33-2-806". Amendment effective July 1, 1999.

1993 Amendment: Chapter 451 near beginning of first sentence of (1), before "life", deleted "domestic"; and made minor changes in style.

33-20-606. Variable contracts to meet insurance contract requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 19, Ch. 157, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 271 in (1) after "33-20-104" inserted "33-20-110"; and made minor changes in style. Amendment effective July 1, 2009.

Part 7
Charitable Gift Annuities

Part Compiler's Comments

Effective Date: Section 10, Ch. 482, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 24, 2003.

Applicability: Section 11, Ch. 482, L. 2003, provided: "[This act] applies to charitable contributions made after [the effective date of this act]." Effective April 24, 2003.

Part 8
Suitability in Annuity Transactions

Part Compiler's Comments

Effective Date: This part is effective October 1, 2007.

Applicability: Section 14, Ch. 476, L. 2007, provided: "[This act] applies to all group and individual annuity contracts and certificates subject to the provisions of [sections 1 through 13] [Title 33, ch. 20, parts 8 and 9] sold on or after [the effective date of this act]." Effective October 1, 2007.

33-20-802. Purpose — scope.

Compiler's Comments

2021 Amendment: Chapter 432 in (1) near beginning after "this part is to require" inserted "producers to act in the best interest of the consumer when making a recommendation of an annuity and to require", near middle after "to establish" inserted "and maintain", after "to supervise recommendations" deleted "and to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products", and near end after "time of the transaction are" substituted "effectively" for "appropriately"; in (2) substituted current text for former text that read: "This part applies to any recommendation to purchase, exchange, or replace an annuity made to a consumer by an insurance producer or by an insurer when an insurance producer is not involved that results in the recommended purchase, exchange, or replacement"; inserted (3) providing for no private cause of action for a violation of this part; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 324 in (1) near beginning inserted "require insurers to establish a system to supervise recommendations and to"; in (2) near beginning substituted "recommendation to purchase, exchange, or replace" for "recommendation to purchase or exchange" and at end inserted "or replacement"; and made minor changes in style. Amendment effective January 1, 2018.

33-20-803. Exemptions.

Compiler's Comments

2021 Amendment: Chapter 432 in (1) at end after "consumer" inserted "pursuant to this part"; in (2)(d) before "maintained" inserted "established or"; and made minor changes in style. Amendment effective October 1, 2021.

33-20-804. Definitions.

Compiler's Comments

2021 Amendment: Chapter 432 inserted definitions for cash compensation, consumer profile information, continuing education credit, continuing education provider, insurer, intermediary, material conflict of interest, noncash compensation, nonguaranteed elements, and producer deleted former definition of insurance producer that read: ""Insurance producer", in addition to the definition in 33-17-102, includes an insurance producer licensed to sell, solicit, or negotiate annuities"; deleted former definition of insurer that read: ""Insurer", in addition to the definition in 33-1-201, includes an insurer providing annuity products"; in definition of recommendation in (a) after "provided" substituted "a producer" for "an insurance producer or by an insurer when an insurance producer is not involved" and after "individual consumer that" substituted "was intended to result or does result" for "results" and inserted (b) concerning what the term does not include; in definition of replacement near beginning before "is to be purchased" substituted "annuity" for "policy or contract", after "proposing insurer" substituted "whether or not a producer is involved" for "when an insurance producer is not involved", and near end after "an existing" inserted "annuity or other insurance"; deleted definition of suitability information (see 2021 Session Law for text); and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 324 in definition of recommendation near end substituted "purchase, exchange, or replacement" for "purchase or exchange"; inserted definitions of replacement and suitability information; and made minor changes in style. Amendment effective January 1, 2018.

33-20-805. Duties of insurers and producers— best interest obligations.

Compiler's Comments

2021 Amendment: Chapter 432 substituted current section text for former text (see 2021 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 324 in (1) in first sentence at end inserted "including the consumer's suitability information, and that there is a reasonable basis to believe all of the following"; inserted (1)(a) through (1)(d) concerning factors a consumer has reasonable basis to believe regarding annuity transaction; in (2) near beginning inserted "or replacement" and at end substituted "obtain the consumer's suitability information" for "obtain information concerning:

(a) the consumer's financial status;

(b) the consumer's tax status;

(c) the consumer's investment objectives; and

(d) other information used or considered reasonable in making recommendations to the consumer by the insurance producer or by the insurer when an insurance producer is not involved"; inserted (3) concerning reasonable basis to believe annuity is suitable; in (4)(a) near end substituted "subsection (1) or (3) related to any annuity transaction if" for "subsection (1) related to any recommendation if a consumer"; inserted (4)(a)(i) and (4)(a)(ii) concerning criteria related to no obligation on part of insurance producer; in (4)(a)(ii) before "information inserted "suitability" and at end inserted "and the annuity transaction is not recommended"; in (4)(a)(iv) substituted "annuity transaction" for "insurance transaction"; deleted former (4)(d)(iii) that read "(iii) fails to provide complete or accurate information"; in (4)(b) substituted current text for "Subject to subsection (1), an insurer's or insurance producer's recommendation must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation"; inserted (5) concerning recordkeeping by insurer or insurance producer; in (6) substituted current text for former (4) and (5) that read: "(4) (a) An insurer may contract with a third party as provided in subsection (6) to establish and maintain a system to supervise recommendations that is reasonably designed to achieve compliance with this section.

(b) A system designed and maintained by an insurer must at a minimum provide for:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of the insurer's records that are reasonably designed to assist in detecting and preventing violations of this part.

(5) An insurance producer or independent agency shall:

(a) adopt a system established by an insurer to supervise recommendations of the insurance producer or agency's insurance producers that is reasonably designed to achieve compliance with this part; or

(b) establish and maintain a system that at a minimum provides for:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this part"; in (7)(a) after "party" deleted "including an insurance producer or independent agency" and at end deleted "with respect to insurance producers under contract with or employed by the third party"; inserted (7)(b) concerning insurer's responsibility for taking corrective action and possible sanctions and penalties; in (7)(c) substituted current text for former text that read: "An insurer shall make reasonable inquiry to ensure that the third party is performing the functions required under subsection (4) and shall take reasonable action under the circumstances to enforce the third party's contractual obligations to perform the functions"; deleted former (6)(c) that read: "(c) An insurer may comply with its obligation to make reasonable inquiry to make reasonable inquiry by doing each of the following"; in (7)(c)(ii) at beginning substituted "monitoring and, as appropriate, conducting audits to ensure that" for "based on reasonable selection criteria, periodically selecting third parties for a review to determine whether"; in (8) and (8)(b) following "insurer" deleted "insurance producer, or independent agency"; deleted former (8) that read: "(8) An insurance producer or independent agency contracting as a third party with an insurer pursuant to subsection (6) shall promptly, when requested by the insurer, give a certification as described in subsection (6) or give a clear statement that it is unable to meet the certification criteria"; inserted (9) concerning attempts to dissuade consumer from requesting information, filing complaint, or cooperating with investigation of complaint; in (10)(b) after "maintained by this" substituted "section" for "regulation"; and made minor changes in style. Amendment effective January 1, 2018.

33-20-806. Compliance mitigation — penalties — enforcement.

Compiler's Comments

2021 Amendment: Chapter 432 in (1) inserted current text for former text (see 2021 Session Law for former text); inserted (3) concerning reduction or elimination of penalty; inserted (4) concerning the authority to enforce compliance"; and made minor changes in style. Amendment effective October 1, 2021.

33-20-807. Producer training.

Compiler's Comments

2021 Amendment: Chapter 432 in (1) in first sentence in three places substituted "producer" for "insurance producer" and inserted last sentence concerning insurer-provided product-specific training standards and materials; inserted (2)(a) and (2)(b) concerning training course; inserted (2)(f) concerning producer who has completed an annuity training course prior to October 1, 2021; inserted (2)(g) concerning courses with components substantially similar to the provisions of this section; and made minor changes in style. Amendment effective October 1, 2021.

Effective Date: Section 7, Ch. 324, L. 2017, provided: "[This act] is effective January 1, 2018."

Part 9
Annuity Disclosure

Part Compiler's Comments

Effective Date: This part is effective October 1, 2007.

Applicability: Section 14, Ch. 476, L. 2007, provided: "[This act] applies to all group and individual annuity contracts and certificates subject to the provisions of [sections 1 through 13] [Title 33, ch. 20, parts 8 and 9] sold on or after [the effective date of this act]." Effective October 1, 2007.

33-20-905. Standards for disclosure document and buyer's guide.

Compiler's Comments

2017 Amendment: Chapter 177 in (4)(c)(iv) at end inserted "within 10 years of issuance under 33-20-309"; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 4, Ch. 177, L. 2017, provided: "[This act] applies to annuity contracts issued or renewed on or after [the effective date of this act]." Effective October 1, 2017.

Part 10
General Requirements for Group Life

33-20-1001. Group contracts required to meet group requirements.

Compiler's Comments

1981 Amendment: Substituted "33-20-1106" for "33-20-1105" in (1).

33-20-1002. Employee life insurance defined.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 11
Groups and Group Requirements

33-20-1101. Employee groups.

Compiler's Comments

2007 Amendment: Chapter 430 in (3)(a) deleted former first three sentences that read: "The premium for the policy must be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer or partly from the employer's funds and from funds contributed by the insured employees. A policy may not be issued if the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution"; inserted (3)(a) establishing three premium payment options; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 469 in (1) at beginning of first sentence inserted "Subject to the requirements in subsections (2) through (5)", near middle after "employer" deleted "which employer or trustees shall be deemed the policyholder", and at end after "employer" deleted "subject to the following requirements" and inserted second sentence requiring that the employer or trustees be considered the policyholder; in (2)(c) near end after "part of" substituted "working hours" for "his time"; in (4) after "least" substituted "two" for "10"; and made minor changes in style. Amendment effective October 1, 2005.

33-20-1102. Labor union groups.

Compiler's Comments

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

33-20-1103. Employer and labor union combinations — trustee groups.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-20-1105. Debtor groups.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment — Applicability: In (1) after "of the creditor" deleted "whose indebtedness is repayable either in installments or in one sum at the end of a period not in excess of 18 months from the initial date of the debt"; and in (4) deleted second sentence that read: "Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of 5 years, except that such insurance may be continued for an additional period not exceeding 6 months in the case of default, extension, or recasting of the loan." Amendment applicable to policies of credit life and disability insurance delivered or issued for delivery on or after October 1, 1985 (sec. 4, Ch. 617, L. 1985).

33-20-1111. Dependents of employee and labor union groups — coverage.

Compiler's Comments

2007 Amendment: Chapter 430 in (1)(a)(iii) at end deleted "If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution"; and made minor changes in style. Amendment effective October 1, 2007.

1987 Amendment: In (3), at end of first sentence, changed "subsections (1), (2), and (3)" to "subsections (1)(a), (1)(b), and (1)(c)".

33-20-1112. Discretionary groups.

Compiler's Comments

Effective Date: Section 3, Ch. 163, L. 2011, provided: "[This act] is effective on passage and approval." Approved April 8, 2011.

Part 12
Group Contract Provisions

33-20-1201. Provisions required in group contracts.

Compiler's Comments

2001 Amendment: Chapter 227 in introductory clause near beginning of first sentence after "group life insurance" inserted "or a certificate" and inserted second sentence allowing omission of inappropriate provision from a certificate; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 in introductory clause after "set forth in" substituted "this part" for "33-20-1202 through 33-20-1211"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-20-1202. Grace period.

Compiler's Comments

2003 Amendment: Chapter 380 near beginning of first sentence after "policy" inserted reference to certificate; and made minor changes in style. Amendment effective October 1, 2003.

33-20-1203. Incontestability.

Compiler's Comments

2003 Amendment: Chapter 380 near beginning after "policy" inserted reference to certificate; and made minor changes in style. Amendment effective October 1, 2003.

33-20-1204. Application — statements considered representations.

Compiler's Comments

2003 Amendment: Chapter 380 near beginning after "policy" inserted reference to certificate; and made minor changes in style. Amendment effective October 1, 2003.

33-20-1205. Insurability.

Compiler's Comments

2003 Amendment: Chapter 380 near beginning after "policy" inserted reference to certificate; and made minor changes in style. Amendment effective October 1, 2003.

33-20-1206. Misstatement of age.

Compiler's Comments

2003 Amendment: Chapter 380 near beginning after "policy" inserted reference to certificate; and made minor changes in style. Amendment effective October 1, 2003.

33-20-1207. Payment of benefits.

Compiler's Comments

2003 Amendment: Chapter 380 in (1) in first sentence near beginning after "policy" inserted reference to certificate and before "becoming" substituted "benefits" for "sum", in second sentence after "beneficiary" substituted reference to benefits considered part of intestate estate for "as to all or any part of such sum living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured", and inserted last sentence pertaining to additional benefits for funeral or other expenses incident to last illness or death; in (2) after "policy" inserted reference to certificate; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: Inserted (2) requiring payment of interest by reference to applicable section.

33-20-1208. Certificate.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Conflict Between Contract and Certificate of Insurance: Decedent's employer provided him with group life insurance and paid the total premium. Employer kept the master policy, which stated that the benefit paid would be 300% of annual salary at the time of death, rounded to the nearest dollar. A certificate of insurance not containing this formula was issued to decedent and stated that his benefit would be $104,000. Employer paid premiums based on that amount. Decedent was not shown to have read the master policy. The certificate was issued pursuant to a statute requiring it. Decedent's salary upon his death was $14,700, and based on the policy formula, the correct benefit was $44,000. Insurer sent employer a corrected certificate showing the proper benefit 19 days before decedent died, but the certificate was not given to decedent or his wife until after his death, and neither was informed of the error and correction before death occurred. The master policy stated that the policy controlled in event of discrepancy between it and the certificate. On appeal from judgment that wife was entitled to a $104,000 benefit, the Supreme Court ruled that: (1) the certificate was part of the contract, and in view of the conflict the construction most favorable to the insured would be adopted and the policy provision that the policy governed would be disregarded; (2) insured contracted only indirectly, through his employer, with insurer and his certificate of insurance was his primary source of information regarding the policy and thus he was entitled to rely on the certificate to correctly state the coverage; (3) if the coverage stated on the certificate is incorrect, insured and beneficiaries are deprived of the chance to supplement coverage if they find it inadequate; (4) the amount of decedent's coverage was the essence of the policy; (5) insurer was the drafter of the policy and certificate and must bear the burden of the ambiguity it created; and (6) equity did not require reformation of the contract to correct the error as the certificate was a year old and due diligence would have resulted in discovery of the error before death. Martin v. Crown Life Ins. Co., 202 M 461, 658 P2d 1099, 40 St. Rep. 216 (1983).

33-20-1209. Conversion on termination of eligibility.

Compiler's Comments

2007 Amendment: Chapter 430 inserted (3)(b) regarding continuation of policy for person on reduced work hours; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 380 inserted (2) authorizing insurer to contract with another insurer to issue conversion policies; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 in (1) near beginning after "insurance policy" inserted "or certificate"; and made minor changes in style. Amendment effective October 1, 2001.

1981 Amendment: Deleted "without disability or other supplementary benefits" after "such person shall be entitled to have issued to him by the insured, without evidence of insurability, an individual policy of life insurance" in (1); substituted "including but not limited to term insurance, if the group policy so provides," for "except term insurance," in (1)(a); added "and shall offer benefits at least equal to those under the group coverage" at the end of (1)(a); inserted ", at the option of the insured," after "the individual policy shall" at the beginning of (1)(b); and added (2) authorizing continued coverage during period of reduced hours of employment.

Case Notes

Accidental Death Coverage Considered Life Insurance for Purposes of Conversion Rights: Golt worked as a civilian employee of the Army and Air Force Exchange Service (AAFES) until he was discharged from employment in 1994 for cause. Thirty days after termination, Golt died of carbon monoxide poisoning. As a benefit of employment, Golt was covered by an accident insurance policy issued by General American Life Insurance Company (General), which provided that if he died while covered by the policy, his estate was eligible to receive $200,000. The policy also provided that coverage would terminate on the first premium due date after Golt ceased to be an employee, which in this case was 6 days after Golt was terminated from employment. The General policy also allowed the group accident policy to be converted to an individual policy within 31 days of discharge upon written application and payment of the first premium. In addition to the General policy, Golt was also insured by Aetna Life Insurance Company (Aetna) under a group life and accident and health insurance policy, which provided a life insurance benefit of $32,000 if Golt died from any cause while insured, plus an accidental death benefit of $32,000 in the event of Golt's accidental death. The Aetna policy provided that coverage ceased upon termination of employment, but allowed the group life insurance policy to be converted to individual life insurance within 31 days of discharge and provided that if Golt died during that period, benefits would be payable. AAFES transmitted the Aetna claim, which paid $32,000 under the life insurance provisions but denied the claim for accidental death benefits on grounds that the coverage ended when employment was terminated. AAFES did not transmit the General claim. A subsequent request for benefits from General was denied because the claim was not submitted within 20 days after the covered loss occurred. Golt's wife commenced an action in 1996 in federal court, seeking accidental death benefits from both Aetna and General. The federal District Court concluded that there was no coverage under either policy and entered final judgment in favor of the insurers. In 1999, the Supreme Court agreed to address three questions certified by the Ninth Circuit Court of Appeals pursuant to former Rule 44, M.R.App.P. (now superseded), regarding the Montana statutory definitions of life insurance for purposes of determining an insured's conversions rights. The Supreme Court held that under 33-1-205, an insurance coverage may come within the definition of two kinds of insurance. Therefore, although accidental death coverage is disability insurance, for purposes of conversion rights, it is also life insurance as defined in 33-1-208. As life insurance, accidental death coverage is subject to a 31-day conversion right upon termination of coverage pursuant to this section and, in the event of death within the 31-day conversion period, is subject to automatic conversion under 33-20-1211. With regard to Golt's policies, the accidental death policy remained in effect, even when Golt died during the 31-day grace period without exercising the right to convert the policy by making application and paying the first premium. Golt v. Aetna Life Ins. Co., 2000 MT 155, 300 M 142, 2 P3d 841, 57 St. Rep. 613 (2000).

33-20-1210. Conversion on termination of policy or certificate.

Compiler's Comments

2003 Amendment: Chapter 380 inserted (2) authorizing insurer to contract with another insurer to issue conversion policies; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 throughout section in five places after "policy" inserted "or certificate"; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: At end of (1), changed "and" to "or".

1981 Amendment: Decreased from 5 years to 3 years the length of time a person must be covered under a group policy to convert the policy on termination; and increased the amount in subsection (2) from $2,000 to $10,000.

33-20-1211. Death pending conversion.

Compiler's Comments

2001 Amendment: Chapter 227 throughout section in three places after "policy" inserted "or certificate"; and made minor changes in style. Amendment effective October 1, 2001.

Case Notes

Accidental Death Coverage Considered Life Insurance for Purposes of Conversion Rights: Golt worked as a civilian employee of the Army and Air Force Exchange Service (AAFES) until he was discharged from employment in 1994 for cause. Thirty days after termination, Golt died of carbon monoxide poisoning. As a benefit of employment, Golt was covered by an accident insurance policy issued by General American Life Insurance Company (General), which provided that if he died while covered by the policy, his estate was eligible to receive $200,000. The policy also provided that coverage would terminate on the first premium due date after Golt ceased to be an employee, which in this case was 6 days after Golt was terminated from employment. The General policy also allowed the group accident policy to be converted to an individual policy within 31 days of discharge upon written application and payment of the first premium. In addition to the General policy, Golt was also insured by Aetna Life Insurance Company (Aetna) under a group life and accident and health insurance policy, which provided a life insurance benefit of $32,000 if Golt died from any cause while insured, plus an accidental death benefit of $32,000 in the event of Golt's accidental death. The Aetna policy provided that coverage ceased upon termination of employment, but allowed the group life insurance policy to be converted to individual life insurance within 31 days of discharge and provided that if Golt died during that period, benefits would be payable. AAFES transmitted the Aetna claim, which paid $32,000 under the life insurance provisions but denied the claim for accidental death benefits on grounds that the coverage ended when employment was terminated. AAFES did not transmit the General claim. A subsequent request for benefits from General was denied because the claim was not submitted within 20 days after the covered loss occurred. Golt's wife commenced an action in 1996 in federal court, seeking accidental death benefits from both Aetna and General. The federal District Court concluded that there was no coverage under either policy and entered final judgment in favor of the insurers. In 1999, the Supreme Court agreed to address three questions certified by the Ninth Circuit Court of Appeals pursuant to former Rule 44, M.R.App.P. (now superseded), regarding the Montana statutory definitions of life insurance for purposes of determining an insured's conversions rights. The Supreme Court held that under 33-1-205, an insurance coverage may come within the definition of two kinds of insurance. Therefore, although accidental death coverage is disability insurance, for purposes of conversion rights, it is also life insurance as defined in 33-1-208. As life insurance, accidental death coverage is subject to a 31-day conversion right upon termination of coverage pursuant to 33-20-1209 and, in the event of death within the 31-day conversion period, is subject to automatic conversion under this section. With regard to Golt's policies, the accidental death policy remained in effect, even when Golt died during the 31-day grace period without exercising the right to convert the policy by making application and paying the first premium. Golt v. Aetna Life Ins. Co., 2000 MT 155, 300 M 142, 2 P3d 841, 57 St. Rep. 613 (2000).

33-20-1212. Notice as to conversion right.

Compiler's Comments

2001 Amendment: Chapter 227 in first sentence in two places after "policy" inserted "or certificate"; and made minor changes in style. Amendment effective October 1, 2001.

33-20-1213. Policy and certificate provisions — conformity with state statutes.

Compiler's Comments

2003 Amendment: Chapter 380 in three places after "policy" inserted reference to certificate; and made minor changes in style. Amendment effective October 1, 2003.

Part 13
Viatical Settlements

Part Compiler's Comments

1997 Statement of Intent: The statement of intent attached to Ch. 298, L. 1997, provided: "A statement of intent is required for this bill because [section 15] [33-20-1315] grants rulemaking authority to the insurance commissioner. The rulemaking authority is consistent with the requirements of Public Law 104-191, H.R. 3103, which provides for the adoption of standards promulgated by the national association of insurance commissioners. The commissioner in adopting rules needs to establish trade practice standards for regulating advertising and solicitation of viatical settlement contracts, for evaluating reasonableness of payments under viatical settlement contracts, and for determining the forms necessary to effectively administer the bill. The rules adopted should be consistent with any regulations adopted under Public Law 104-191, H.R. 3103. [Section 15] [33-20-1315] also requires the commissioner to adopt rules that establish fees that are commensurate with those required under 33-22-708."

Part Administrative Rules

Title 6, chapter 6, subchapter 85, ARM Viatical settlement agreements.

33-20-1302. Definitions.

Compiler's Comments

2003 Amendment: Chapter 493 inserted definitions of financing entity, related provider trust, special purpose entity, and viator; substituted definition of viatical settlement contract for former definition that read: ""Viatical settlement contract" means a written agreement between a viatical settlement provider and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:

(a) the terms establish that the viatical settlement provider pays something of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider; and

(b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate to name the beneficiary"; in definition of viatical settlement provider deleted former (b) that read: "(b) A viatical settlement provider may use the term "life settlement provider" to describe the business transacted under the license and may use the term "life settlement contract" instead of "viatical settlement contract""; in definition of viatical settlement purchaser in (b) at end inserted references to a qualified institutional buyer, financing entity, special purpose entity, and related provider trust; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

2001 Amendment: Chapter 295 inserted definition of viatical settlement purchase agreement and provided that agreement does not include viatical settlement contract; and inserted definition of viatical settlement purchaser and provided that purchaser does not include licensed viatical settlement provider or broker. Amendment effective January 1, 2002.

Administrative Rules

ARM 6.6.8501 Definitions.

33-20-1303. License requirements.

Compiler's Comments

2009 Amendment: Chapter 271 inserted (4)(e) requiring a business entity other than a partnership or corporation to be organized under Montana law. Amendment effective July 1, 2009.

2007 Amendments — Composite Section: Chapter 44 in (5)(b) after "subsection" substituted "(5)(a)" for "(4)(a)"; in (5)(d) near end substituted "33-17-1203(2)" for "33-17-1203(3)"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 399 in (2)(a), (2)(c), and (2)(d) substituted reference to individual for reference to person; in (5)(b) substituted reference to subsection (5)(a) for reference to subsection (4)(a); in (5)(d) substituted "33-17-1203(2)" for "33-17-1203(3)"; and made minor changes in style. Amendment effective May 3, 2007.

2005 Amendment: Chapter 552 in (1) in two places after "provider" deleted "or viatical settlement broker"; inserted (2) requiring viatical settlement broker license; inserted (3) imposing fiduciary duty on brokers and producers to act in best interests of viator; in (4)(a) after "broker" inserted reference to requirements of subsection (2)(a) and after "license" substituted "in a form approved" for "on forms prescribed"; inserted (5) relating to continuing education requirements for viatical settlement brokers; and made minor changes in style. Amendment effective October 1, 2005.

33-20-1304. Issuance of license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 20, Ch. 157, L. 2023. Amendment effective April 19, 2023.

33-20-1307. Suspension — revocation — refusal to issue or renew license.

Compiler's Comments

2009 Amendment: Chapter 271 in (3) near beginning substituted "business entity" for "firm, partnership, or corporation" and before "officer" inserted "member"; and made minor changes in style. Amendment effective July 1, 2009.

33-20-1308. Terms of contract.

Compiler's Comments

2009 Amendment: Chapter 272 at end of (3) after "viatical settlement provider" inserted "or financing entity"; and inserted (4) identifying the provisions a viatical settlement contract must contain. Amendment effective January 1, 2010.

Severability: Section 9, Ch. 272, L. 2009, was a severability clause.

33-20-1310. Examination of business and practices of licensee or applicant — maintenance of business records.

Compiler's Comments

1999 Amendment: Chapter 416 at end of (4) substituted "in cases in which the commissioner determines that the merits of public disclosure exceed the demands of individual privacy" for "as considered necessary by the commissioner in administration of this part"; and made minor changes in style. Amendment effective October 1, 1999.

33-20-1311. Disclosure of information to policyholder.

Compiler's Comments

2001 Amendment: Chapter 295 in introductory clause in second sentence substituted "form approved" for "form prescribed". Amendment effective January 1, 2002.

Administrative Rules

ARM 6.6.8505 Disclosure.

33-20-1313. Requirements for entering into viatical settlement contract — prohibitions on finder's fee — solicitations — discrimination — false or misleading advertising or solicitation — misuse of confidential information.

Compiler's Comments

2005 Amendment: Chapter 552 inserted (1) establishing conditions for entering into viatical settlement contracts; inserted (2) relating to requirements for copies of certification and independent evidence; and made minor changes in style. Amendment effective October 1, 2005.

33-20-1314. Payment to escrow or trust account — lump-sum payment.

Compiler's Comments

2009 Amendment: Chapter 272 in (1) at beginning substituted "Within 3 business days after" for "Immediately upon". Amendment effective April 17, 2009.

Severability: Section 9, Ch. 272, L. 2009, was a severability clause.

33-20-1315. Rules — standards — bond.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 44 in (3)(c) at end substituted "33-20-1303(5)" for "33-20-1303(4)". Amendment effective October 1, 2007.

Chapter 399 in (1) in first sentence substituted "individuals" for "persons"; and in (3)(c) substituted "33-20-1303(5)" for "33-20-1303(4)". Amendment effective May 3, 2007.

2005 Amendment: Chapter 552 in (1) inserted last sentence relating to viatical settlement providers' payments to insured who is not terminally or chronically ill; inserted (3)(c) relating to continuing education program; deleted former (4) that read: "(4) shall require viatical settlement providers or viatical settlement brokers to pay an amount greater than the cash surrender value or accelerated death benefit if the insured is not terminally ill or chronically ill"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 493 in (1) in first sentence at end inserted "for insured persons who are terminally ill or chronically ill"; in (2) substituted "or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers" for "and an errors and omissions insurance policy of both kinds of licensees"; inserted (4) requiring payment of an amount greater than the cash surrender value or accelerated death benefit if the insured is not terminally or chronically ill; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

Administrative Rules

Title 6, chapter 6, subchapter 85, ARM Viatical settlement agreements.

33-20-1316. Service of process.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 21, Ch. 157, L. 2023. Amendment effective April 19, 2023.

Effective Date: This section is effective October 1, 2001.

33-20-1317. Disclosure of information to viatical settlement purchasers.

Compiler's Comments

2003 Amendment: Chapter 114 in (3)(o) at end substituted "policyholder or certificate holder" for "viator". Amendment effective October 1, 2003.

Effective Date: Section 6, Ch. 295, L. 2001, provided that this section is effective January 1, 2002.

33-20-1318. Conflict of laws.

Compiler's Comments

Severability: Section 9, Ch. 272, L. 2009, was a severability clause.

Effective Date: Section 10(1), Ch. 272, L. 2009, provided that this section is effective April 17, 2009.

Law Review Articles

Conflict of Laws: The Recent History of Montana's Rules for Contracts, Lukes, 56 Mont. L. Rev. 553 (1995).

Part 14
Structured Settlement Protection

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

Applicability: Section 13, Ch. 351, L. 2005, provided: "[This act] applies to any transfer of structured settlement payment rights under a transfer agreement executed on or after October 1, 2005."

Part 15
Funeral Insurance

Part Compiler's Comments

Saving Clause: Section 8, Ch. 507, L. 2007, was a saving clause.

Effective Date: Section 9, Ch. 507, L. 2007, provided that this part is effective January 1, 2008.

Part Administrative Rules

ARM 6.6.1001 Purpose.
ARM 6.6.1003 Applicability of other rules.
ARM 6.6.1006 Licensing of specialized funeral insurance producers.
ARM 6.6.1014 Right to return policy.

33-20-1501. Funeral insurance.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 202, L. 2023. Amendment effective October 1, 2023.

2011 Amendment: Chapter 52 in (1)(d) before "policy" inserted "initial". Amendment effective March 24, 2011.

Part 16
Unclaimed Life Insurance Benefits Act

Part Compiler's Comments

Erroneous Codification Instruction: Section 7, Ch. 119, L. 2013, provided that this part was to be codified as an integral part of Title 33, chapter 15. The code commissioner had codified this part in Title 33, chapter 20, to more closely reflect the subject matter.

Effective Date: Section 8, Ch. 119, L. 2013, provided that this part is effective January 1, 2014.

33-20-1603. Application of part.

Compiler's Comments

2015 Amendment: Chapter 63 in (2) substituted "an insurer" for "a company". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

CHAPTER 21
CREDIT LIFE AND DISABILITY INSURANCE

Chapter Compiler's Comments

Source: This chapter was enacted in 1959 from the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. When enacted in 1959, the following states had adopted versions of this Model Bill: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wyoming.

Chapter Administrative Rules

ARM 6.6.1101 through 6.6.1111 Credit life and disability insurance.

Chapter Case Notes

Car Rental Accidental Death Policy as Disability Insurance: An insurance policy providing a renter of a car with coverage for accidental death arising from operation during the rental period was classified as disability insurance under 33-1-207, rather than life insurance under 33-1-208. Therefore, an "intoxicants exclusion" in the policy was not voided by the prohibition against such exclusions as related to life insurance policies under 33-20-121. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

Part 1
General Provisions

Part Compiler's Comments

Severability: Section 15, Ch. 156, L. 1989, was a severability clause.

Part Attorney General's Opinions

Debt Cancellation Contract — Subject to Insurance Code: A national bank that enters into a debt cancellation contract whereby the balance of a loan is canceled on the debtor's death must qualify and comply with the applicable provisions of this title. 31 A.G. Op. 6 (1965).

33-21-101. Short title.

Compiler's Comments

Source: Section 2(A)(1) of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

33-21-102. Purpose and scope.

Compiler's Comments

1989 Amendment: Substituted language in (2) and (3) providing for application of the chapter (see 1989 Session Law for text) for "(2) All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than 15 years' duration."

1985 Amendment — Applicability: In (2) substituted "15 years' duration" for "10 years' duration". Amendment applicable to policies of credit life and disability insurance delivered or issued for delivery on or after October 1, 1985 (sec. 4, Ch. 617, L. 1985).

Source: Sections 1 and 2(A)(2) of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

33-21-103. Definitions.

Compiler's Comments

1993 Amendment: Chapter 179 in two places in (1) and in (2), after "debtor", inserted reference to joint debtors.

1989 Amendment: In definition of creditor inserted subsections relating to an affiliate, director, and any other person; inserted definitions of credit transaction and open-end credit; and made minor changes in style.

Source: Section 2(B) of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

33-21-104. Existing insurance — choice of insurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: Made minor changes in style.

Source: Section 11 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

33-21-105. Claims.

Compiler's Comments

1989 Amendment: Near beginning of (3) substituted "partnership" for "firm"; and made minor changes in style.

Source: Section 10 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

Case Notes

Tort Action — Failure to Pay Promptly: An insurer has not only a contractual duty to make payment of a valid claim but a statutory duty to do so as soon as possible. It is the breach of that statutory requirement, a duty independent of the insurance contract, that gives rise to tort liability. The measure of damages in such a case is provided in 27-1-317. First Sec. Bank v. Goddard, 181 M 407, 593 P2d 1040 (1979).

Credit Disability Insurance — Punitive Damages Not Barred: The District Court erred in granting the defendant insurer's motion to strike the plaintiff's claim for punitive damages arising out of the defendant's refusal to pay on a credit disability insurance policy. The general rule that exemplary damages are not allowed in actions arising out of breach of contract would not preclude award of exemplary damages where acts constituting alleged breach of contract also violated state law. State ex rel. Larson v. District Court, 149 M 131, 423 P2d 598 (1967), distinguished in State ex rel. Cashen v. District Court, 157 M 40, 482 P2d 567 (1971).

33-21-111. Rules — enforcement of chapter.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 12 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

Administrative Rules

Title 6, chapter 6, subchapter 11, ARM Credit life and disability insurance.

33-21-112. Judicial review.

Compiler's Comments

Source: Section 13 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

33-21-113. Penalties.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 271 in first sentence near beginning after "person" inserted "or business entity" and at end after "$250" inserted "if the violation is found to be not willful"; near end of third sentence after "person" substituted "business entity" for "partnership, or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

1989 Amendment: Near end, after "person", inserted "partnership, or corporation"; and made minor changes in style.

Source: Section 14 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

Part 2

Policy Requirements

Part Compiler's Comments

Severability: Section 15, Ch. 156, L. 1989, was a severability clause.

Part Administrative Rules

Title 6, chapter 6, subchapter 11, ARM Credit life and disability insurance.

33-21-201. Form of issuance.

Compiler's Comments

1993 Amendment: Chapter 179 inserted (5) concerning joint term life insurance; inserted (6) concerning disability insurance policies; and made minor changes in style.

1989 Amendment: At beginning inserted "An insurer may deliver or issue for delivery" and after "credit disability insurance" deleted "shall be issued"; in (2) substituted "disability benefit provisions in individual policies of credit life insurance" for "disability provisions in individual life policies to provide such coverage"; in (4) substituted "group credit life insurance policies" for "group life policies"; and made minor changes in style.

Source: Section 3 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

33-21-202. Amount.

Compiler's Comments

1997 Amendment: Chapter 530 inserted (3) requiring that credit disability insurance for credit card indebtedness provide coverage for minimum payments or finance charges, premium payments, and other charges throughout the term of coverage.

1989 Amendment: Substituted language in (1) providing for the initial amount of credit life insurance (see 1989 Session Law for text) for "(1) The amount of credit life insurance shall be equal to the indebtedness, provided that the original indebtedness does not exceed the sum of $15,000. If the original indebtedness exceeds the sum of $15,000, the amount of credit life insurance shall not exceed the indebtedness. Where indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance, the amount of insurance shall not exceed the approximate unpaid indebtedness on the date of death and where secured by a group policy of credit life insurance shall not exceed the exact amount of unpaid indebtedness on such date. Except, that agricultural loans not exceeding 1 year may be written up to the amount of the loan commitment on a nondecreasing or level term plan"; at end of (2) deleted "provided that the original indebtedness does not exceed the sum of $15,000. If the original indebtedness exceeds the sum of $15,000, the amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments"; and made minor changes in style.

Source: Section 4 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

Case Notes

Failure to Promptly Pay — Tort Liability: An insurer has not only a contractual duty to make payment of a valid claim but a statutory duty to do so as soon as possible. It is the breach of that statutory requirement, a duty independent of the insurance contract, which gives rise to tort liability. The measure of damages in such a case is provided in 27-1-317. First Sec. Bank v. Goddard, 181 M 407, 593 P2d 1040 (1979).

33-21-203. Term.

Compiler's Comments

1989 Amendment: Inserted (2) relating to evidence of insurability; at end of (3) inserted clause allowing term less than that of transaction or extending beyond transaction; and made minor changes in style.

Source: Section 5 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

Case Notes

Effective Date of Disability Insurance: Disability insurance, subject to acceptance by the insurer, commences on the date when the debtor becomes obligated to the creditor. A promissory note takes effect from the time of its delivery. The promissory note was considered delivered at the time it was mailed to the bank. The note thereupon became the property of the payee when it was posted to the bank. It was beyond the control of the makers at that time. The time of mailing therefore became the "time of his engagement" under 30-3-413, fixing the liability of the maker. It was at that time that the insured became obligated to the creditor under 33-21-204, and the disability insurance financed by the note became effective. First Sec. Bank v. Goddard, 181 M 407, 593 P2d 1040 (1979).

33-21-204. Policy or certificate delivered — time of delivery — provisions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (2), in first sentence, substituted "the name of each debtor, the premium or amount of payment, if any" for "the name or names of the debtor, the amount of the payment", inserted "the amount, term" before "and a brief description", and inserted last two sentences relating to a substituted insurer and possible refunds; in (3) inserted "the name of each debtor or, in the case of a group certificate of insurance", before "the rate or amount of payment" substituted "debtor" for "person or persons insured", inserted "the amount and term thereof and" before "any exceptions", and inserted the last sentence requiring notice if the insurance term is less than the loan term; inserted (4) relating to delivery in connection with an open-end credit agreement; and made minor changes in phraseology, punctuation, grammar, and style.

Source: Section 6 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

Case Notes

Requirement for Payment of Insurance: The contract for the retail installment purchase of a mobile home contained a clause stating that credit life and disability insurance was not required by the seller. The buyer, now deceased, applied for the insurance and paid the first premium. The retail installment sale contract was assigned to the First National Bank, making it a creditor. An employee of the seller decided the buyer was not eligible for insurance and never forwarded his application to the parent company. Buyer's premium payment was not returned to him until the attorney for his estate requested payment on the insurance. If the payment by the buyer was required, 33-21-206(3) applies, and the seller was required to give written notice to the buyer which was not done. If no payment was required, 33-21-206(3) does not apply. This is a genuine issue of material fact, and therefore summary judgment was improperly granted. Cameron v. First Nat'l Bank, 186 M 345, 607 P2d 1113 (1980).

Effective Date of Disability Insurance: Disability insurance, subject to acceptance by the insurer, commences on the date when the debtor becomes obligated to the creditor. A promissory note takes effect from the time of its delivery. The promissory note was considered delivered at the time it was mailed to the bank. The note thereupon became the property of the payee when it was posted to the bank. It was beyond the control of the makers at that time. The time of mailing therefore became the "time of his engagement" under 30-3-413, fixing the liability of the maker. It was at that time that the insured became obligated to the creditor under 33-21-204, and the disability insurance financed by the note became effective. First Sec. Bank v. Goddard, 181 M 407, 593 P2d 1040 (1979).

33-21-205. Filing, approval, and withdrawal of forms and rates — disapproval.

Compiler's Comments

1989 Amendment: Substituted language in (1) relating to approval of forms and filing of schedules (see 1989 Session Law for text) for "(1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements, and riders shall be filed with the commission of the state in which the policy is issued"; in (2), in lead-in, substituted language relating to disapproval of forms (see 1989 Session Law for text) for "The commissioner may within 30 days after the filing of all policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements, and riders, in addition to other requirements of law, disapprove any such form"; inserted (2)(a) citing 33-1-502; deleted the end of (3) and all of former (4) and (5) that read: "In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, and no application, binder, endorsement, or rider shall be issued or used until the expiration of 30 days after it has been so filed, unless the commissioner gives his prior written approval thereto.

(4) The commissioner may, at any time after a hearing, of which not less than 20 days' written notice was given to the insurer, withdraw his approval of any such form on any of such grounds.

(5) It is not lawful for the insurer to issue such forms or use them after the effective date of such withdrawal of approval"; in (4) inserted first sentence prohibiting use of a form that has had approval withdrawn; and made minor changes in phraseology and style.

Source: Section 7 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

Administrative Rules

ARM 6.6.1101 through 6.6.1107 Rates.

ARM 6.6.1111 Compliance — forms, contracts, and rates.

33-21-206. Premiums and refunds.

Compiler's Comments

1989 Amendment: In (2) substituted "or amount paid by the debtor for insurance must be paid" for "due shall be paid" and at end, before "the commissioner", inserted "and approved by"; inserted (5) relating to construction of chapter and insurance payments; and made minor changes in style.

Source: Section 8 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

Administrative Rules

ARM 6.6.1108 through 6.6.1110 Premiums and refunds.

33-21-207. Issuance of policies.

Compiler's Comments

1991 Amendment: At end substituted "licensed insurance producer" for "licensed insurance agent".

1989 Amendment: At beginning substituted "Each policy, certificate of insurance, or notice of proposed insurance" for "All policies"; at end substituted "and must, except as provided in 33-17-103, be issued only through a licensed insurance agent" for "and shall be issued only through holders of licenses or authorizations issued by the commissioner"; and made minor changes in style.

Source: Section 9 of the Model Bill for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, promulgated by the National Association of Insurance Commissioners. The states that had adopted this Model Bill in 1959 are listed at the chapter 21 compiler's comment.

CHAPTER 22
DISABILITY INSURANCE

Chapter Compiler's Comments

Review of Health Care Insurance — Advisory Council: Section 1, Ch. 114, L. 2011, required the insurance commissioner to convene an advisory council to review the costs, benefits, and procedural and technical requirements necessary to design, implement, and maintain a statewide all-payer, all-claims database for health care and to report to the children, families, health, and human services interim committee. Chapter 114 was effective July 1, 2011, and terminates December 31, 2012.

Preamble: The preamble attached to Ch. 114, L. 2011, provided: "WHEREAS, comprehensive data about the quality and cost of health care allows state policymakers to monitor the success and efficiency of efforts to reduce health care costs and improve both health care quality and population health; and

WHEREAS, comprehensive health care data can show statewide variation in care, including whether evidence-based guidelines and best-practice clinical standards are being followed and how they affect cost and quality; and

WHEREAS, access to comparative data can help businesses to learn where they stand when compared with their peers with respect to the cost and covered services of health insurance policies; and

WHEREAS, comparative data provides consumers with information that they and their health care providers can use to make informed decisions about the effectiveness of treatments and the quality of care; and

WHEREAS, comparative data supports providers' efforts to design targeted quality improvement initiatives and to compare their own performance with that of their peers; and

WHEREAS, comprehensive health care data helps health care policymakers evaluate reform efforts and identify communities that provide cost-effective care so that successful initiatives can be identified and replicated; and

WHEREAS, other states have learned of the value of all-payer, all-claims health care databases and have implemented them to the benefit of their citizens while protecting the privacy rights of all individuals."

Chapter Case Notes

Car Rental Accidental Death Policy as Disability Insurance: An insurance policy providing a renter of a car with coverage for accidental death arising from operation during the rental period was classified as disability insurance under 33-1-207, rather than life insurance under 33-1-208. Therefore, an "intoxicants exclusion" in the policy was not voided by the prohibition against such exclusions as related to life insurance policies under 33-20-121. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

Chapter Attorney General's Opinions

Coverage Required Under Uniform Health Benefit Plans: The Legislature expressly codified uniform health benefit plans with other insurance plans and the mandated benefit provisions codified throughout this chapter, without any language restricting application of the mandated benefit provisions. Therefore, uniform health benefit plans authorized by Ch. 527, L. 1995, must include coverage for the services and articles specifically referred to in 33-22-245 (now repealed) and 33-22-522 (now repealed) and for the mandated benefit provisions of Title 33, ch. 22. 46 A.G. Op. 17 (1996).

Chapter Law Review Articles

The Effect of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on Health Care Fraud in Montana, Eddy, 61 Mont. L. Rev. 175 (2000).

Part 1
General Provisions

Part Case Notes

Statute of Limitations on Claim for Disability Insurance Cost of Living Adjustments: Rodgers purchased a disability policy from defendant in 1983. On the application, Rodgers checked a box requesting cost of living adjustments (COLA), but the request was turned down by defendant because a policy with COLA benefits required a higher premium. Defendant received a document purportedly signed by Rodgers, requesting that the COLA rider be deleted. Defendant then issued a policy without the benefits, and Rodgers began paying premiums on the policy without COLA benefits. Rodgers raised no issue or complaint regarding the lack of COLA payments until 2002, when he sued defendant for COLA payments. The District Court summarily dismissed the claim, and on appeal, the Supreme Court affirmed. Rodgers had been receiving monthly disability payments, without COLA benefits, since 1989, and because the payments did not increase, it should have been clear to Rodgers that he was not receiving COLA increases. By the time that Rodgers' claim was filed in 2002, the statute of limitations for the claim had expired, and summary judgment for defendant was proper. Rodgers v. MONY Life Ins. Co., 2005 MT 290, 329 M 289, 124 P3d 137 (2005).

33-22-101. Exceptions to scope.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 600, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 7, Ch. 600, L. 2023, provided: "[This act] applies to health care policies and plans issued or renewed on or after [the effective date of this act]." Effective January 1, 2024.

2021 Amendment: Chapter 501 in (2)(a) near middle inserted "33-22-170 through 33-22-177"; in (2)(b) near beginning inserted reference to Title 33, chapter 2, part 24, and substituted "33-22-170" for "33-22-175" and near end after "compensation" deleted "group, and blanket"; and made minor changes in style. Amendment effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

2019 Amendments — Composite Section: Chapter 88 inserted (2)(b) regarding application of sections 33-22-175 through 33-22-177 to workers' compensation, group, and blanket policies; and made minor changes in style. Amendment effective January 1, 2020.

Chapter 215 in (2)(a) inserted reference to 33-22-180; and made minor changes in style. Amendment effective April 30, 2019.

Effective Date — Applicability: Section 7, Ch. 88, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to contracts and agreements in effect on and after [the effective date of this act]."

Section 7, Ch. 215, L. 2019, provided: "[This act] is effective on passage and approval [approved April 30, 2019] and applies to contracts and agreements signed on or after [the effective date of this act]." Effective April 30, 2019.

2013 Amendments — Composite Section: Chapter 97 in (1) inserted "33-22-153"; and made minor changes in style. Amendment effective March 27, 2013.

Chapter 164 in (1) inserted "33-22-138"; and made minor changes in style. Amendment effective January 1, 2014.

2009 Amendment: Chapter 271 in (2) after "Sections" inserted "33-22-137"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 356 in (2) inserted reference to 33-22-152; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendments — Composite Section — Code Commissioner Correction: Chapter 290 in (1) inserted "Subject to subsection (2)"; inserted (2) concerning applicability of 33-22-150 and 33-22-151 to group or blanket policies; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 469 in (1) at beginning inserted "Subject to subsection (2)"; inserted (2) providing that 33-22-301 applies to blanket policies; and made minor changes in style. Amendment effective October 1, 2005.

The code commissioner has combined the sentences inserted as subsection (2) into a single sentence for purposes of comprehension and style.

Effective Date — Applicability: Section 5, Ch. 290, L. 2005, provided: "[This act] is effective January 1, 2006, and applies to claims made on or after January 1, 2006."

2003 Amendment: Chapter 380 in introductory clause inserted reference to 33-22-129 and 33-22-140; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 178 in (1) near middle inserted "33-22-136". Amendment effective March 25, 1999.

Chapter 472 in introductory clause after "33-22-130 through" deleted "33-22-132, 33-22-134". Amendment effective October 1, 1999.

The code commissioner deleted the reference to 33-22-135 to reflect that section's inclusion by the amendment made by Ch. 178.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendments: Chapter 198 in introductory clause, near end, added reference to part 19 of this chapter in list of exceptions. Amendment effective April 2, 1997.

Chapter 410 in introductory clause, in list of exceptions, inserted "33-22-134, 33-22-135".

Chapter 416 in introductory clause, in list of exceptions, inserted "33-22-141, 33-22-142".

Preamble: The preamble attached to Ch. 198, L. 1997, provided: "WHEREAS, the specialty of obstetrics and gynecology is devoted to primary and preventative health care of women throughout their lifetime; and

WHEREAS, significant numbers of women view their obstetrician and gynecologist as their primary or only physician; and

WHEREAS, for many women, an obstetrician or gynecologist is often the only physician they see regularly during their reproductive years; and

WHEREAS, a general medical examination was the second most frequently cited purpose for patient visits to obstetricians and gynecologists in 1989 and 1990; and

WHEREAS, obstetricians and gynecologists refer their patients less frequently than other primary care physicians, thus avoiding costly and time-consuming referrals to specialists."

Severability: Section 12, Ch. 198, L. 1997, was a severability clause.

Applicability: Section 13, Ch. 198, L. 1997, provided: "[This act] applies to each health benefit plan that is issued, delivered, issued for delivery, or renewed in Montana on or after January 1, 1998."

Section 9, Ch. 410, L. 1997, provided: "[This act] is applicable to all contracts issued or renewed on or after January 1, 1998."

1995 Amendment: Chapter 527 in introductory clause inserted reference to 33-22-243. Amendment effective January 1, 1996.

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

1993 Amendment: Chapter 451 in introductory clause inserted references to 33-22-107, 33-22-110, 33-22-114, 33-22-125, and 33-22-130 through 33-22-132; and made minor changes in style.

Source: Section 8 of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-102. Third-party ownership.

Compiler's Comments

Source: Section 3(E) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-107. Premium increase restriction — exception — notice of rate increase and policy changes.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 380 near beginning of (1) after "issues" inserted "or renews". Amendment effective October 1, 2003.

Chapter 384 inserted (3) requiring 45-day and 60-day notices for health insurance policy rate changes or benefit modifications and providing for delivery of notices. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 11, Ch. 384, L. 2003, provided: "[This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004."

1997 Amendment: Chapter 531 in (1), near beginning after "insurer", inserted "or a health service corporation that issues a policy, certificate, or membership contract covering a resident of this state" and before "disability" substituted "individual's group" for "individual group's".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

33-22-109. Riders.

Compiler's Comments

1997 Amendment: Chapter 416 in (1), in first sentence after "Except for", substituted "group health insurance coverage provided by a group health plan or a health insurance issuer" for "a policy issued under chapter 22, part 18" and near end, after "provider of health care services within", substituted "3 years" for "4 years"; and deleted (3) that read: "(3) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy."

Severability: Section 4, Ch. 522, L. 1995, was a severability clause.

Effective Date — Retroactive Applicability: Section 6, Ch. 522, L. 1995, provided that this section is effective April 21, 1995, and sec. 5 provided that this section applies retroactively to policies, certificates, or contracts of disability insurance issued prior to April 21, 1995, except those issued under Title 33, chapter 22, part 18, and provided that an insurer may not, as a result of the application of this section, seek reimbursement for a claim previously paid.

33-22-110. Preexisting conditions.

Compiler's Comments

1997 Amendment: Chapter 416 in (1), near beginning, substituted "33-22-246 and 33-22-514" for "subsection (2)"; deleted former (2) that read: "(2) A health benefit plan may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 3 years preceding the effective date of coverage of an insured person. The condition may be excluded for a maximum of 12 months"; deleted former (3) that read: "(3) For purposes of subsection (2), a "health benefit plan" means a hospital expense-incurred or medical expense-incurred policy, contract, or certificate provided by a health insurer, health service corporation, or health maintenance organization"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 [33-22-110] through 8, 17 through 40, and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

1995 Amendment: Chapter 522 in (1), at beginning, inserted exception clause; inserted (2) forbidding health benefit plan coverage exclusion for a preexisting condition, except under a certain stated circumstance; inserted (3) defining health benefit plan; and inserted (5) forbidding disability income insurance coverage exclusion for a preexisting condition, except under a certain stated circumstance. Amendment effective April 21, 1995.

Severability: Section 4, Ch. 522, L. 1995, was a severability clause.

Case Notes

Material Misrepresentation on Application for Credit Life and Disability Insurance — Denial of Coverage Warranted: Schlemmer applied to the North Central Life Insurance Company (North Central) for credit life and disability insurance but misrepresented his health history. If he had answered correctly on the application, he would have been ineligible for the insurance. Nevertheless, he averred by his signature that he understood the form and that his application statements were true, so the policy was issued. Schlemmer later filed a claim for disability payments. North Central investigated, found that Schlemmer had been treated within the previous 2 years for hypertension, chronic obstructive lung disease, and disease or disorder of the kidneys, contrary to his statements in the application, and denied the claim and refunded Schlemmer's premiums. Schlemmer sued for damages, claiming that the application and underwriting procedures used by North Central violated 33-18-201, commonly known as the unfair claims settlement practices law, breached the covenant of good faith and fair dealing, and constituted fraud. Schlemmer also maintained that the District Court erred in failing to rule on whether North Central's agent had knowledge of Schlemmer's condition, which might have created a question of material fact. The Supreme Court affirmed the District Court's rulings that: (1) Schlemmer's claim of ignorance of the contents of the written application could not prevail because the application language was clear and unambiguous and Schlemmer did not deny signing it; (2) Schlemmer materially misrepresented his health on the application; (3) the material misrepresentation was legally sufficient to allow North Central to deny coverage under the policy; and (4) Schlemmer's argument that North Central's agent knew or should have known about Schlemmer's health was mere speculation insufficient to create an issue of fact to defeat North Central's properly supported motion for summary judgment. Further, the Supreme Court declined to consider Schlemmer's argument that the misrepresentation could not serve as a basis to rescind the policy because he did not apply for benefits until more than 2 years after applying for the insurance, pursuant to 33-22-205, because Schlemmer never raised the issue at the District Court level. Schlemmer v. N. Cent. Life Ins. Co., 2001 MT 256, 307 M 203, 37 P3d 63 (2001).

33-22-111. Policies and certificates to provide for freedom of choice of practitioners — professional practice not enlarged.

Compiler's Comments

2017 Amendment: Chapter 206 in (1) near middle after "licensed professional counselor" inserted "licensed marriage and family therapist"; and made minor changes in style. Amendment effective January 1, 2019.

2015 Amendment: Chapter 342 in (1) after "physical therapist" inserted "speech-language pathologist, audiologist, licensed addiction counselor". Amendment effective April 28, 2015.

2005 Amendment: Chapter 519 in (1) in first sentence near middle substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

2001 Amendment: Chapter 235 in (1) in first sentence after "naturopathic physician" inserted "physical therapist". Amendment effective January 1, 2002.

1999 Amendments — Composite Section: Chapter 459 in three places in (1) after "policies" inserted "or certificates" and after "acupuncturist" inserted "naturopathic physician". Amendment effective January 1, 2000.

Chapter 472 in (1) in first sentence substituted "advanced practice registered nurse" for "nurse specialist". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1993 Amendment: Chapter 628 near beginning of first sentence of (1), after "blanket policies", deleted "and all policies insuring the payment of compensation under the Workers' Compensation Act"; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 16, Ch. 628, L. 1993, was a severability clause.

Retroactive Applicability: Section 17, Ch. 628, L. 1993, provided: "Because of the decision in Wieland v. St. Compensation Mutual Insurance Fund, WCC No. 9208-6554, there is a conflict between the interpretation of 33-22-111 and Rule 24.29.1403, Administrative Rules of Montana, implementing 39-71-704, upheld in Garland v. Anaconda Co., 177 Mont. 240 (1978), upon which workers' compensation medical benefits were premised, the legislature, in order to resolve the conflict through the curative legislation in [section 1] [33-22-111], intends that [section 1] [33-22-111] apply retroactively, within the meaning of 1-2-109, to all causes of action arising before [the effective date of this act]." Effective July 1, 1993.

1991 Amendment: In first sentence of (1) inserted "acupuncturist".

Applicability: Section 3, Ch. 362, L. 1991, provided: "[This act] applies to disability insurance policies issued or renewed and to health service corporations organized or operating in this state on or after October 1, 1991."

1989 Amendments: Chapter 83 near middle of (1) substituted "podiatrist" for "chiropodist".

Chapter 97 near middle of (1) inserted "physician assistant-certified".

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

1987 Amendment: In (1) inserted "licensed professional counselor" in list of health service providers and deleted last sentence that read: "An insurer shall offer, at additional cost to the insured, the option of disability and health insurance coverage for services performed by a licensed professional counselor."

1985 Amendments: Chapter 302 near middle of (1) after "psychologist", inserted "licensed social worker".

Chapter 572 in (1) inserted third sentence requiring option to insure services performed by licensed professional counselor.

1983 Amendment: Near middle of (1), inserted "or nurse specialist as specifically listed in 37-8-202".

1981 Amendments: Chapter 258 inserted "dentist" after "physician" near the middle of (1).

Chapters 303 and 324 deleted "clinical" before "psychologist" in (1).

Case Notes

Workers' Compensation Claimant's Right to Choose Treating Physician Not Denied by Department of Labor and Industry Selection of Panel Physician for Diagnosis: Grooms filed a workers' compensation claim with her insurer, the State Fund, alleging that she suffered from a skin allergy condition. The State Fund denied liability and requested that the Department of Labor and Industry process her claim under the Occupational Disease Act of Montana (now repealed and merged with Workers' Compensation Act) by scheduling a medical examination for her by a member of a panel of physicians. Grooms objected to the first designated physician, and another was designated. The physician concluded that Grooms was suffering from an allergic condition that could not be definitively attributed to her employment. The diagnosis was given to Grooms, and she was notified of her right to have another medical evaluation done by a panel physician at her own expense. In the Workers' Compensation Court, Grooms alleged that her right to choose her own treating physician under this section was violated by 39-72-602 (now repealed), pursuant to which the Department chose a panel physician to conduct an examination. However, the Workers' Compensation Court held against her. The Supreme Court affirmed the Workers' Compensation Court, holding that the choice of a treating physician under this section has nothing to do with the selection of an examining physician from a panel by the Department. The purpose of the examination by a physician chosen from the panel is for consultation with an independent expert to determine if the claimant is suffering from an occupational disease and not for the purpose of treatment. The Supreme Court distinguished the case relied on by Grooms, Stordalen v. Ricci's Food Farm, 261 M 256, 862 P2d 393 (1993), by noting that the case involved neither 39-72-602 nor examination by a medical panel physician. Grooms v. Ponderosa Inn, 283 M 459, 942 P2d 699, 54 St. Rep. 725 (1997).

Conflict Between Workers' Compensation Statute and Administrative Rule — Fiscal Health Not Justification for Discrimination: Under this section, a workers' compensation claimant is entitled to freedom of choice in selecting a treating physician, but under ARM 24.29.1511 (now repealed), an injured worker cannot change physicians without the approval of the State Fund. The Workers' Compensation Court correctly found that pursuant to 33-1-102, the freedom of choice under this section is not extended to workers' compensation cases. However, in reality, the exemption extends to cases involving coverage by the State Fund under Plan No. 1 or 3 but not to workers covered under Plan No. 2. The State Fund argued that the differentiation did not present an equal protection problem because the disparate treatment was rationally related to the legitimate governmental goal of controlling workers' compensation costs. The Supreme Court found that the policy of discriminating among injured workers based solely on which insurance plan supplied coverage was an equal protection violation because it was not rationally related to a legitimate government objective. Offering services to some while excluding others always results in lower costs, but cost control alone does not justify disparate treatment that violates an individual's right to equal protection of the law. Discrimination is not allowed merely for the sake of fiscal health. Heisler v. Hines Motor Co., 282 M 270, 937 P2d 45, 54 St. Rep. 345 (1997), distinguishing Stratemeyer v. Lincoln County, 259 M 147, 855 P2d 506 (1993), and Chiropractors for Justice v. Alaska, 895 P2d 962 (Alaska 1995).

Attorney General's Opinions

Payment for Services of Psychologists: Montana Physicians Service (Blue Shield) and Blue Cross of Montana may pay for services rendered by psychologists but are not required to do so. 37 A.G. Op. 151 (1978).

33-22-112. Disability insurance coverage of services of state institutions — provision void — rate of payment.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Exclusion of Coverage for Services Rendered at State Institutions: The Montana Physicians Service is prohibited from including any provision in its health service agreements that excludes payment for services rendered to beneficiaries hospitalized at state institutions if such health services would be covered if rendered to the beneficiaries outside of such institution, and any such provisions are void and ineffective. 37 A.G. Op. 33 (1977).

33-22-114. Coverage required for services provided by physician assistants, advanced practice registered nurses, and registered nurse first assistants.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 88, L. 2023. Amendment effective April 18, 2023.

2011 Amendment: Chapter 173 near end of introductory clause following "coverage" inserted "as well as payment or reimbursement"; inserted (2) and (3) concerning requiring insurance coverage for certain care services provided by an advanced practice registered nurse and a registered nurse first assistant; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 519 in two places substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

33-22-115. Provider agreement limited to covered services — dental network constraints — penalty — definitions.

Compiler's Comments

Effective Date: Section 3, Ch. 160, L. 2013, provided: "[This act] is effective July 1, 2013."

33-22-116. Prohibition on coverage of abortion services in qualified health plans.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Preamble: The preamble attached to Ch. 352, L. 2021, provided: "WHEREAS, under Public Law 111-148, the Patient Protection and Affordable Care Act, federal tax dollars are routed to exchange-participating health insurance plans through affordability credits provided to individuals with incomes of up to 400% of the federal poverty level to assist the individuals with purchasing health insurance coverage, including health insurance plans that provide coverage for abortions; and

WHEREAS, federal funding of insurance plans that provide coverage for abortions is an unprecedented change in federal abortion funding policy that fails to take into account the Hyde Amendment that prohibits federal funds from subsidizing health insurance plans that provide coverage of abortions; and

WHEREAS, the provision of federal funding for health insurance plans that provide abortion coverage is nothing short of taxpayer-funded and government-endorsed abortion; and

WHEREAS, Public Law 111-148 allows a state to opt out of permitting health insurance plans that cover abortions from participating in the health insurance exchanges within that state and thus prohibit taxpayer money from subsidizing plans that cover abortions within that state; and

WHEREAS, the U.S. Supreme Court has, in past decisions, concluded that the decision not to fund abortion services places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy and that a state may engage in unequal subsidization of abortion and other medical services to encourage alternative activity considered to be in the public interest; and

WHEREAS, a January 2010 Quinnipiac University poll showed that 7 in 10 Americans were opposed to provisions in federal health care reform that use federal funds to pay for abortions and abortion coverage."

33-22-117. Construction.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Preamble: The preamble attached to Ch. 352, L. 2021, provided: "WHEREAS, under Public Law 111-148, the Patient Protection and Affordable Care Act, federal tax dollars are routed to exchange-participating health insurance plans through affordability credits provided to individuals with incomes of up to 400% of the federal poverty level to assist the individuals with purchasing health insurance coverage, including health insurance plans that provide coverage for abortions; and

WHEREAS, federal funding of insurance plans that provide coverage for abortions is an unprecedented change in federal abortion funding policy that fails to take into account the Hyde Amendment that prohibits federal funds from subsidizing health insurance plans that provide coverage of abortions; and

WHEREAS, the provision of federal funding for health insurance plans that provide abortion coverage is nothing short of taxpayer-funded and government-endorsed abortion; and

WHEREAS, Public Law 111-148 allows a state to opt out of permitting health insurance plans that cover abortions from participating in the health insurance exchanges within that state and thus prohibit taxpayer money from subsidizing plans that cover abortions within that state; and

WHEREAS, the U.S. Supreme Court has, in past decisions, concluded that the decision not to fund abortion services places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy and that a state may engage in unequal subsidization of abortion and other medical services to encourage alternative activity considered to be in the public interest; and

WHEREAS, a January 2010 Quinnipiac University poll showed that 7 in 10 Americans were opposed to provisions in federal health care reform that use federal funds to pay for abortions and abortion coverage."

33-22-121. Notice required for cancellation or refusal to renew.

Compiler's Comments

2007 Amendment: Chapter 399 in (1) near beginning after "policy" inserted "or certificate", after "policyowner" inserted "or certificate holder, as appropriate", after "same" inserted "as the named insured", before "address" deleted "post office", after "cancellation" deleted "or refusal to renew", and near end substituted "earlier" for "less"; substituted (1)(a) concerning beginning period for which premiums have not been paid for former text that read: "30 days after the date of mailing or delivery of the notice of cancellation for nonpayment of premiums or a material misrepresentation contained in the application"; inserted (1)(b) concerning date of mailing and delivery; inserted (2) concerning notice of cancellation; inserted (3) concerning disability policy; in (4) inserted reference to subsection (2); and made minor changes in style. Amendment effective May 3, 2007.

1989 Amendment: In (1), near beginning after "cancel", inserted "or refuse to renew", after "policy" deleted "for nonpayment of premiums", near end, after "written notice", deleted "of cancellation", and after "cancellation" inserted "or refusal to renew"; in (1)(a), after "notice", inserted "of cancellation for nonpayment of premiums or a material misrepresentation contained in the application; or"; inserted (1)(b) establishing a 90-day effective date for cancellation or refusal to renew; at beginning of (2) substituted "The notice requirements in subsection (1)" for "Said 30 days shall"; and made minor changes in punctuation and style.

33-22-122. Contents of notice — proof — limitation on recovery — exemptions.

Compiler's Comments

2007 Amendment: Chapter 399 in (1)(a)(i) at end inserted "or certificate"; in (1)(b)(i) at end substituted "or certificate will be canceled" for "will lapse or be forfeited"; in (2) inserted certificate holder as defined term and near middle after "policy" inserted "or certificate"; in (3) near end after "policyowners" inserted "or certificate holders"; in (4) near beginning after "policy" inserted "or certificate"; in (5)(a) substituted "group health plans" for "group or group-type policies"; and made minor changes in style. Amendment effective May 3, 2007.

2003 Amendment: Chapter 384 deleted former (4)(c) that read: "(c) policies upon which premiums are payable monthly or at more frequent intervals"; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 11, Ch. 384, L. 2003, provided: "[This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004."

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-22-123. Return of unearned premium.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

33-22-125. Independent chiropractic physical examination or review of records.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 727, L. 1991, provided: "WHEREAS, the quality of chiropractic care provided to and received by Montana residents has been negatively affected in certain cases by the activities of independent chiropractic medical examiners; and

WHEREAS, health care insurers often employ persons who are not qualified to evaluate Montana claims, conduct a physical examination, or review chiropractic records to aid the insurer in making a determination regarding the propriety of chiropractic treatment and the costs of the treatment; and

WHEREAS, the ability of Montana chiropractors to meet uniform standards of treatment and patient care is impaired because the criteria applied by persons conducting the examinations or record reviews are subjective and differ widely among the persons, resulting in a wide variance in the procedures employed; and

WHEREAS, the ability of Montana chiropractors to provide timely and effective chiropractic care to Montana residents is impaired because the persons conducting the examinations or record reviews, especially those providing the services from outside Montana, are often inaccessible to Montana chiropractors."

Effective Date: Section 4, Ch. 727, L. 1991, provided: "[This act] is effective July 1, 1991."

33-22-127. Coverage of oral therapy — opioid use disorder.

Compiler's Comments

Effective Date: Section 57, Ch. 157, L. 2023, provided that this section is effective on passage and approval. Approved April 19, 2023.

33-22-128. Coverage for children with hearing loss — definitions.

Compiler's Comments

Effective Date: Section 6, Ch. 209, L. 2021, provided: "[This act] is effective January 1, 2022."

Applicability: Section 7, Ch. 209, L. 2021, provided: "[This act] applies to health insurance plans and policies issued or renewed on or after January 1, 2022."

33-22-129. Coverage for treatment of diabetes — outpatient self-management training and education — limited benefit for medically necessary equipment and supplies — limitations on cost-sharing requirements for insulin.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 463, L. 2023, inserted (3)(b) relating to coverage for insulin and copayment or other cost-sharing requirements; and made minor changes in style. Amendment effective January 1, 2024.

Section 3, Ch. 520, L. 2023, in (2)(a) near middle of first sentence substituted "include an annual benefit" for "include a $250 benefit for a person each year" and at end of introductory clause inserted "At a minimum, the benefit must consist of"; inserted (2)(a)(i) and (2)(a)(ii) relating to minimum coverage requirements for visits; inserted (2)(c) defining visit; and made minor changes in style. Amendment effective January 1, 2024.

Applicability: Section 6, Ch. 463, L. 2023, provided: "[This act] applies to plans and policies issued on or after January 1, 2024."

2011 Amendment: Chapter 54 in (6)(a) near beginning after "does not apply to" deleted "the state employee group insurance program, the university employee group insurance program, or"; in (6)(b) at beginning deleted "The state employee group insurance program, the university employee group insurance program, or". Amendment effective October 1, 2011.

Application to Types of Insurance: Section 5, Ch. 450, L. 2001, provided: "The provisions of [section 1(1) and (2)] [33-22-129(1) and (2)] apply if the state employee group insurance program, the university employee group insurance program, or any employee group insurance program of a city, town, county, school district, or other political subdivision of this state reduces or discontinues substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies."

Effective Date — Applicability: Section 7, Ch. 450, L. 2001, provided: "[This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date."

33-22-130. Coverage for adopted children from time of placement — preexisting conditions.

Compiler's Comments

1997 Amendments: Chapter 416 in (2), at end of second sentence, inserted "and may not impose a preexisting condition exclusion". Amendment effective July 1, 1997.

Chapter 480 in (3), after "means", substituted language regarding transfer of physical custody of child legally free for adoption for "placement for adoption as defined in 40-8-103".

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8 [section 6 is 33-22-130], 17 through 40, and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Section 173, Ch. 480, L. 1997, provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 7, and Title 52, chapter 8, part 1] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Severability: Section 172, Ch. 480, L. 1997, was a severability clause.

1993 Amendment: Chapter 451 near middle of (1), after "state", deleted "and that provides coverage for a family member of the insured or subscriber".

Applicability: Section 5, Ch. 387, L. 1991, provided: "[This act] applies to policies, certificates, or contracts delivered, issued for delivery, or renewed in this state on or after January 1, 1992."

Source: This section is based on 1989 Laws of New Mexico, Ch. 89, codified as N.M. Stat. Ann. § 59A-22-34.1 (1978).

33-22-131. Coverage for treatment of inborn errors of metabolism.

Compiler's Comments

1999 Amendment: Chapter 434 at end of (1) substituted "inborn errors of metabolism that involve amino acid, carbohydrate, and fat metabolism and for which medically standard methods of diagnosis, treatment, and monitoring exist" for "phenylketonuria"; inserted (2) concerning what coverage must include; inserted (3)(a) defining medical foods; in (3)(b) in definition of treatment at end deleted "and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status"; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 6, Ch. 434, L. 1999, provided that this section is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

1995 Amendment: Chapter 379 in (1), near beginning, inserted "medical expense"; and inserted (4) concerning policies to which this section does not apply.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 near middle of (1), after "state", deleted "and that provides coverage for a family member of the insured or subscriber"; and made minor changes in style.

Preamble: The preamble to Ch. 80, L. 1989, provided: "WHEREAS, phenylketonuria is a rare, inherited genetic disease afflicting persons with the inability to metabolize an essential amino acid that is found in most food proteins; and

WHEREAS, maintaining a normalized blood level of phenylalanine is the only treatment of the disease; and

WHEREAS, without this treatment patients suffer severe mental and physical difficulties; and

WHEREAS, because not all costs of treating phenylketonuria are covered by health care insurance."

Applicability: Section 3, Ch. 80, L. 1989, provided: "[This act] applies to policies or contracts delivered or issued for delivery or renewed in this state on or after January 1, 1990."

33-22-132. Coverage for minimum mammography and other breast examinations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 215, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 63 in (1) after "medical expense" deleted "cancer"; and made minor changes in style. Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

1995 Amendment: Chapter 379 in (1), near beginning, inserted "medical expense, cancer, and blanket"; and inserted (4) concerning policies to which this section does not apply.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 near middle of (1), after "state", deleted "and that provides coverage for a family member of the insured or subscriber"; and at beginning of (3) substituted "A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each mammography examination performed before the application of" for "These services are subject to" and deleted former second sentence that read: "A minimum $70 payment must be made for each mammography examination performed."

Applicability: Section 4, Ch. 663, L. 1991, provided that this section applies to policies or contracts delivered or issued for delivery or renewed in this state on or after January 1, 1992.

33-22-133. Coverage for minimum hospital stay following childbirth.

Compiler's Comments

Effective Date: Section 4, Ch. 183, L. 1997, provided: "[This act] is effective January 1, 1998."

33-22-134. Postmastectomy care.

Compiler's Comments

2011 Amendment: Chapter 54 in last sentence near beginning after "applies to" deleted "the state employee group insurance program, the university system employee group insurance program". Amendment effective October 1, 2011.

Applicability: Section 9, Ch. 410, L. 1997, provided: "[This act] is applicable to all contracts issued or renewed on or after January 1, 1998."

33-22-135. Coverage for reconstructive breast surgery after mastectomy — benefits and conditions.

Compiler's Comments

2009 Amendment: Chapter 67 in (1) at end of introductory clause after "coverage" deleted "for reconstructive breast surgery resulting from a mastectomy that resulted from breast cancer"; inserted (1)(a) through (1)(c) pertaining to required coverage for breast reconstruction and prostheses; inserted (2) providing that covered treatment must be determined in consultation with attending physician and patient; inserted (3) providing that required coverage may be subject to annual deductibles and coinsurance; deleted former (2) that read: "(2) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for all stages of one reconstructive breast surgery on the nondiseased breast to establish symmetry with the diseased breast after definitive reconstructive breast surgery on the diseased breast has been performed"; in (4) in definition of mastectomy at end after "breast" deleted "as a result of breast cancer" and in definition of reconstructive breast surgery in second sentence after "includes" inserted "but is not limited to"; in (5) near beginning after "surgery" deleted "include but are not limited to the costs of prostheses and" and after "radiation therapy" inserted "include"; inserted (6) requiring insurer to provide written notice of availability of benefits; inserted (7) prohibiting insurer from denying eligibility for purpose of avoiding provisions of section or from penalizing health care providers to induce care that is inconsistent with section's provisions; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 9, Ch. 410, L. 1997, provided: "[This act] is applicable to all contracts issued or renewed on or after January 1, 1998."

33-22-136. Insurance for spouse and dependents of deceased peace officer, game warden, or firefighter.

Compiler's Comments

2011 Amendment: Chapter 54 in (1) near beginning of second sentence after "also applies to" deleted "a state employee group insurance program, a university system group insurance program". Amendment effective October 1, 2011.

2005 Amendment Void: The amendment to this section made by sec. 3, Ch. 332, L. 2005, was rendered void by sec. 4, Ch. 332, L. 2005, a coordination section, that provided: "If Senate Bill No. 197 and [this act] are both passed and approved, then [this act] is void." Senate Bill No. 197 was passed and approved as Ch. 391, L. 2005.

Effective Date: Section 5, Ch. 178, L. 1999, provided that this section is effective on passage and approval. Approved March 25, 1999.

33-22-137. Cost-sharing requirements — applicability.

Compiler's Comments

Effective Date: Section 37, Ch. 271, L. 2009, provided that this section is effective July 1, 2009.

Applicability: Section 38, Ch. 271, L. 2009, provided: "[Section 24] [enacting 33-22-137] applies to policies, certificates, and membership contracts that are delivered, issued, renewed, extended, or modified on or after January 1, 2010."

33-22-138. Coverage for telehealth services — rulemaking.

Compiler's Comments

2021 Amendment: Chapter 242 in (1) substituted "telehealth" for "telemedicine"; inserted (2) listing restrictions on a policy, certificate, contract, or agreement; inserted (4)(b) regarding coverage of an otherwise noncovered benefit; in (4)(c) and (5) substituted "telehealth" for "telemedicine"; inserted (4)(d) regarding the establishment of a patient provider relationship; inserted (7) allowing the commissioner to adopt rules; in (8)(b)(i) inserted reference to chapter 26 in list; deleted former (8)(c) defining store and forward technology (see 2021 Session Law for former definition); in (8)(c) inserted current definition of telehealth and deleted former definition of telemedicine (see 2021 Session Law for former definition); and made minor changes in style. Amendment effective January 1, 2022.

Code Commissioner Correction: To reflect the repeal of 50-46-310 and the enactment of similar provisions in 16-12-509 by Ch. 576, L. 2021, the Code Commissioner in (4)(d) and (8)(c)(iii) substituted "16-12-509" for "50-46-310".

2017 Amendment: Chapter 94 in (6)(b)(i) inserted reference to Title 37, chapter 4; and made minor changes in style. Amendment effective January 1, 2018.

2015 Amendment: Chapter 63 in (5) inserted "specified disease"; and made minor changes in style. Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

Effective Date: Section 6, Ch. 164, L. 2013, provided: "[This act] is effective January 1, 2014."

33-22-139. Coverage of therapies for Down syndrome.

Compiler's Comments

Effective Date: Section 6, Ch. 256, L. 2015, provided: "[This act] is effective January 1, 2016."

Applicability: Section 7, Ch. 256, L. 2015, provided: "[This act] applies to health insurance plans and policies issued or renewed on or after January 1, 2016."

33-22-140. Definitions.

Compiler's Comments

2021 Amendment — Code Commissioner Correction: Chapter 262 in definition of health insurance issuer inserted (b) exempting direct patient care agreements established pursuant to 50-4-107; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 262 in (13)(b) referred to "[section 1]". However, the apparent intent of the original bill was to refer to sec. 2, Ch. 262, and the Code Commissioner has changed the final statutory reference in (13)(b) accordingly.

2015 Amendment: Chapter 63 in definition of creditable coverage deleted former (a)(vii) that read: "(vii) the Montana comprehensive health association provided for in 33-22-1503"; in definition of federally defined eligible individual in (a) after "individual market" deleted "or under an association portability plan, as defined in 33-22-1501"; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2007 Amendment: Chapter 356 inserted definition of dependent; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendments — Composite Section: Chapter 130 in definition of COBRA continuation provision in (b) at end substituted "29 U.S.C. 1001, et seq." for "Public Law 93-406". Amendment effective October 1, 2005.

Chapter 469 in definition of creditable coverage inserted (a)(xi) to include coverage under a high-risk pool in any state; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendment: Chapter 472 in definition of individual market at end substituted "insurance coverage" for "plan"; in definition of large group market at end substituted "or group health insurance coverage issued to a large employer" for "maintained by a large employer"; in definition of late enrollee near beginning of first sentence after "dependent" inserted "other than a special enrollee under 33-22-523" and in second sentence after "if" deleted "(a) the individual requests enrollment within 63 days after termination of the creditable coverage and:

(i) the individual was covered under creditable coverage at the time of the initial enrollment; or

(ii) the individual lost coverage under creditable coverage as a result of termination of employment or eligibility, reduction in the number of hours of employment, involuntary termination of the creditable coverage, the death of a spouse, divorce, or legal separation;

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period"; in definition of small group market near end after "health plan" inserted "or group health insurance coverage"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 33 is 33-22-140], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40 [section 33 is 33-22-140], and 42 through 44] are effective July 1, 1997."

Source: Many of the definitions in this section are based on definitions found in 42 U.S.C. 300gg(a), 42 U.S.C. 300gg-41, and 42 U.S.C. 300gg-91(a), (b), (d), and (e).

33-22-141. Crediting previous coverage.

Compiler's Comments

2003 Amendment: Chapter 384 at end of (1)(a) after "coverage" deleted "during which the individual was not covered under any creditable coverage"; inserted (1)(b) requiring 63-day period to be counted from date certificate issued; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 11, Ch. 384, L. 2003, provided: "[This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004."

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 34 is 33-22-141], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40 [section 34 is 33-22-141], and 42 through 44] are effective July 1, 1997."

Source: 42 U.S.C. 300gg(c).

33-22-142. Certification of creditable coverage.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 63 deleted former (3)(d)(i) that read: "(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of issuance of a certificate of creditable coverage"; deleted former (3)(d)(iv) that read: "(iv) the telephone number and address of the Montana comprehensive health association"; and made minor changes in style. Amendment effective January 1, 2016.

Chapter 225 in (1)(a) in two places and in (3)(a) after "group" inserted "or individual"; in (1)(a) substituted "a request by an individual who ceases" for "an individual ceases" and at end deleted "or otherwise becomes covered under a COBRA continuation provision"; deleted former (1)(b) and (1)(c) that read: "(b) not later than 10 days after the expiration of the notice period for cancellation for nonpayment of premium pursuant to the provisions of 33-22-121 and 33-22-530 or after termination of coverage for any other reason;

(c) in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision"; in (1)(b) substituted "A request for the certification may be made no later" for "at the request on behalf of an individual made not later" and after "coverage" deleted "described in subsection (1)(a) or (1)(c), whichever is later"; in (2) after "certification" deleted "pursuant to subsection (1)(a)"; in (3)(a) inserted "any applicable"; deleted former (3)(d)(i) (see Ch. 63 note); deleted former (3)(d)(iv) (see Ch. 63 note); substituted current language in (6) regarding notification after cease of coverage for former (6) that read: "(6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market"; and made minor changes in style. Amendment effective April 10, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2009 Amendment: Chapter 271 in (1)(b) near beginning after "after" inserted "the expiration of the notice period for", after "premium" deleted "is effective", and after "provisions of" inserted "33-22-121 and". Amendment effective July 1, 2009.

2003 Amendment: Chapter 384 at beginning of (1)(a) substituted "within 10 days after" for "at the time that"; inserted (1)(b) requiring issuance of certification not later than 10 days after cancellation or termination of coverage; inserted (3)(c) regarding certification of date of issuance of certificate; at end of (3)(d)(i) after "of" substituted reference to issuance of certificate for "termination of creditable coverage"; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 11, Ch. 384, L. 2003, provided: "[This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004."

Applicability: Section 52(2), Ch. 416, L. 1997, provided: "[Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40 [section 36 is 33-22-142], and 42 through 44] are effective July 1, 1997."

Source: 42 U.S.C. 300gg(e).

33-22-143. Rules.

Compiler's Comments

2015 Amendment: Chapter 63 at end deleted "and 33-22-1523"; and made minor changes in style. Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

1997 Statement of Intent: The statement of intent attached to Ch. 416, L. 1997, provided: "A statement of intent is required for this bill because [section 45] [33-22-143] authorizes or requires rules to be adopted by the commissioner of insurance to implement various sections of [this act].

It is the intent of the legislature that rules adopted pursuant to [section 45] [33-22-143] not extend the existing control and regulatory authority of the state auditor beyond that necessary to implement Public Law 104-191."

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40, and 42 through 45 [33-22-143]] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(5), Ch. 416, L. 1997, provided that this section is effective on passage and approval. Approved April 28, 1997.

33-22-150. Reciprocal limitations on claim filing and claim audits — time limit for reimbursements or offsets — exceptions.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 290, L. 2005, provided: "[This act] is effective January 1, 2006, and applies to claims made on or after January 1, 2006."

33-22-151. Offset agreement.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 290, L. 2005, provided: "[This act] is effective January 1, 2006, and applies to claims made on or after January 1, 2006."

33-22-152. Continuation of dependent coverage.

Compiler's Comments

Effective Date: Section 11, Ch. 356, L. 2007, provided: "[This act] is effective January 1, 2008."

33-22-153. Coverage of routine patient costs for participants in cancer clinical trials — definitions — limitations.

Compiler's Comments

Effective Date: Section 9, Ch. 97, L. 2013, provided that this section is effective on passage and approval. Approved March 27, 2013.

33-22-154. Coverage for refill of eyedrops.

Compiler's Comments

Effective Date: Section 6, Ch. 179, L. 2023, provided: "[This act] is effective January 1, 2024."

33-22-155. Coverage of contraceptives.

Compiler's Comments

Effective Date: Section 6, Ch. 600, L. 2023, provided: "[This act] is effective January 1, 2024."

Applicability: Section 7, Ch. 600, L. 2023, provided: "[This act] applies to health care policies and plans issued or renewed on or after [the effective date of this act]." Effective January 1, 2024.

33-22-156. Health insurance rates — filing required — use.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 22, Ch. 157, L. 2023. Amendment effective April 19, 2023.

Severability: Section 8, Ch. 334, L. 2013, was a severability clause.

Effective Date — Applicability: Section 9, Ch. 334, L. 2013, provided: "[This act] is effective July 1, 2013, and applies to rate filings that affect health insurance coverage in the individual or small group market issued on or after January 1, 2014."

33-22-157. Standards for review — notice of deficiency.

Compiler's Comments

2017 Amendment: Chapter 151 in (5) after "unjustified" deleted "or unfairly discriminatory"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

Severability: Section 8, Ch. 334, L. 2013, was a severability clause.

Effective Date — Applicability: Section 9, Ch. 334, L. 2013, provided: "[This act] is effective July 1, 2013, and applies to rate filings that affect health insurance coverage in the individual or small group market issued on or after January 1, 2014."

33-22-158. Trade secret disclosure exemption.

Compiler's Comments

Severability: Section 8, Ch. 334, L. 2013, was a severability clause.

Effective Date — Applicability: Section 9, Ch. 334, L. 2013, provided: "[This act] is effective July 1, 2013, and applies to rate filings that affect health insurance coverage in the individual or small group market issued on or after January 1, 2014."

33-22-159. Rulemaking.

Compiler's Comments

Severability: Section 8, Ch. 334, L. 2013, was a severability clause.

Effective Date — Applicability: Section 9, Ch. 334, L. 2013, provided: "[This act] is effective July 1, 2013, and applies to rate filings that affect health insurance coverage in the individual or small group market issued on or after January 1, 2014."

33-22-170. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 23, Ch. 157, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 501 in (6) near end after "management for pharmacies or pharmacists" deleted "and" and at end inserted "or provide other prescription drug or device services"; and made minor changes in style. Amendment effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

2019 Amendments — Composite Section: Chapter 88 near beginning substituted "33-22-177" for "33-22-174"; inserted definitions of pharmacy performance measurement entity, prescription drug, and prescription drug order; and made minor changes in style. Amendment effective January 1, 2020.

Chapter 215 in introductory clause inserted reference to 33-22-180; inserted definitions of contract pharmacy and federally certified health entity; and made minor changes in style. Amendment effective April 30, 2019.

Effective Date — Applicability: Section 7, Ch. 88, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to contracts and agreements in effect on and after [the effective date of this act]."

Section 7, Ch. 215, L. 2019, provided: "[This act] is effective on passage and approval [approved April 30, 2019] and applies to contracts and agreements signed on or after [the effective date of this act]." Effective April 30, 2019.

2017 Amendment: Chapter 136 in introduction inserted reference to 33-22-174; in definition of pharmacy inserted "health insurance issuer"; in definition of pharmacy benefit manager substituted "health insurance issuer" for "insurer"; inserted definition of reference pricing; and made minor changes in style. Amendment effective January 1, 2018.

Effective Date — Applicability: Section 5, Ch. 136, L. 2017, provided: "[This act] is effective January 1, 2018, and applies to insurance policies and plans issued and in effect on or after January 1, 2018.

Effective Date: This section is effective October 1, 2015.

33-22-171. Maximum allowable cost list — limitations on drugs.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

33-22-172. Maximum allowable cost or reference price list — price formulation, updating, and disclosure — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 24, Ch. 157, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 263 in (4)(a) at end substituted "covered person" for "patient"; inserted (4)(b) that reads: "penalize a pharmacy or a pharmacist for disclosing the information described in subsection (4)(a) to a covered person or for selling a more affordable alternative to a covered person"; inserted (4)(c) that reads: "require a pharmacy to charge or collect a copayment from a covered person that exceeds the total charges submitted by the network pharmacy"; and made minor changes in style. Amendment effective July 1, 2019.

Effective Date — Applicability: Section 2, Ch. 263, L. 2019, provided: "[This act] is effective July 1, 2019, and applies to contracts with pharmacies signed on or after July 1, 2019."

2017 Amendment: Chapter 136 in (1) after "sponsor" inserted "health insurance issuer" and after "list" inserted "or the reference used for reference pricing"; in (2) at beginning inserted "If using a maximum allowable cost list" and after "sponsor" inserted "health insurance issuer"; inserted (3) concerning use of reference pricing; inserted (4) concerning discussion of reimbursement criteria; and made minor changes in style. Amendment effective January 1, 2018.

Effective Date — Applicability: Section 5, Ch. 136, L. 2017, provided: "[This act] is effective January 1, 2018, and applies to insurance policies and plans issued and in effect on or after January 1, 2018."

Effective Date: This section is effective October 1, 2015.

33-22-173. Maximum allowable cost — appeals process.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 25, Ch. 157, L. 2023. Amendment effective October 1, 2023.

Effective Date: This section is effective October 1, 2015.

33-22-174. Opt-out of reference pricing — notification.

Compiler's Comments

2021 Amendment: Chapter 501 deleted former (3)(a) (see 2021 Session Law for former text). Amendment effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

Effective Date — Applicability: Section 5, Ch. 136, L. 2017, provided: "[This act] is effective January 1, 2018, and applies to insurance policies and plans issued and in effect on or after January 1, 2018."

33-22-175. Allowable and prohibited fees on pharmacies.

Compiler's Comments

Effective Date — Applicability: Section 7, Ch. 88, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to contracts and agreements in effect on and after [the effective date of this act]."

33-22-176. Limitation on copayments.

Compiler's Comments

Effective Date — Applicability: Section 7, Ch. 88, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to contracts and agreements in effect on and after [the effective date of this act]."

33-22-177. Rights of pharmacies.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 26, Ch. 157, L. 2023. Amendment effective October 1, 2023.

Effective Date — Applicability: Section 7, Ch. 88, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to contracts and agreements in effect on and after [the effective date of this act]."

33-22-180. Contract coverage — nondiscrimination — penalty.

Compiler's Comments

Effective Date — Applicability: Section 7, Ch. 215, L. 2019, provided: "[This act] is effective on passage and approval [approved April 30, 2019] and applies to contracts and agreements signed on or after [the effective date of this act]." Effective April 30, 2019.

Part 2

Individual Policy Requirements

Part Compiler's Comments

Source: This part is derived from the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-201. Format and content.

Compiler's Comments

2019 Amendment: Chapter 26 in (6) substituted "33-22-221 through 33-22-230" for "33-22-221 through 33-22-231". Amendment effective February 28, 2019.

1995 Amendment: Chapter 379 at beginning substituted "An individual policy" for "A policy"; in (3), near end, substituted "25 years" for "19 years"; in (6) substituted "33-22-221" for "33-22-217"; deleted former (7) that read: "(7) Each form, including riders and endorsements, must be identified by a form number in the lower left-hand corner of the first page of the form"; deleted (9) that read: "(9) Each individual disability policy, except for a single premium nonrenewable policy, issued for delivery in this state on or after January 1, 1980, must contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, the person is permitted to return the policy within 10 days of its delivery, or a longer period as the policy may provide, and to have refunded the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 near beginning of (6), before "33-22-231", inserted "33-22-215 and 33-22-217 through"; and made minor changes in style.

Source: Section 2 of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-202. Required provisions — captions — omissions — substitutions — order.

Compiler's Comments

2019 Amendment: Chapter 26 in (3) substituted "33-22-204 through 33-22-215, 33-22-221 through 33-22-230, and 33-22-232" for "33-22-204 through 33-22-215 and 33-22-221 through 33-22-232"; and made minor changes in style. Amendment effective February 28, 2019.

1995 Amendment: Chapter 379 in (1), in second sentence after "preceded", deleted "individually"; in (3) substituted "33-22-221" for "33-22-217"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1993 Amendment: Chapter 451 near beginning of (3), before "33-22-232", inserted "33-22-215 and 33-22-217 through"; and made minor changes in style.

Source: Section 3(A) and (D) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

Case Notes

Policy Definitions Conflicting With Incontestability Provision — Assertion of Forman Defense Violative of Montana Law: An insured brought an action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. The agent cross-claimed against the company for indemnity and breach of fiduciary duty, contending that Revere planned to assert the Forman defense in Montana (see Mass. Cas. Ins. Co. v. Forman, 516 F2d 425 (5th Cir. 1975), in which an insurer asserts a legal defense to the incontestability clause based on its definition of sickness as excluding disabilities that manifested themselves prior to the date of issue of the policy). The District Court declined to decide the issue of the legality of Revere's disability policy, holding that Revere was entitled to assert the Forman defense and that any opinion concerning the interpretation of the policy would be an inappropriate advisory opinion. The Supreme Court found that the question of whether the policy definitions conflicted with the statutorily required incontestability clause was a question of law on which Deonier's punitive damages claim rested and thus did not constitute an inappropriate advisory opinion. Because the incontestability clause is required by statute, interpretation of language in the clause must be construed to effectuate legislative intent, not the intent of the parties, and the incontestability clause takes precedence over other language in the policy. In this case, the definitional and coverage provisions purported to limit available coverage to disabilities caused by sickness or disease that first manifested after the date on which the policy was issued and to exclude coverage for preexisting conditions that were not disclosed on the application; at the same time, the incontestability clause barred the insurer from denying coverage because a sickness or physical condition had existed before the date on which the policy was issued, creating a conflict in which the incontestability clause must control. Consequently, Revere's assertion of the Forman defense violated Montana law, and denial of coverage for a disability, whether or not the causative sickness first manifested itself before the policy's date of issue, was barred by the incontestability clause. Deonier & Associates v. Paul Revere Life Ins. Co., 2000 MT 238, 301 M 347, 9 P3d 622, 57 St. Rep. 989 (2000), following Galanty v. Paul Revere Life Ins. Co., 1 P3d 658 (Calif. 2000).

33-22-203. Requirement of other jurisdictions — statutes — violation.

Compiler's Comments

Source: Section 3(F) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

Case Notes

Forman Defense — Issues of Material Fact Regarding Whether Insurance Company Breached Duty to Inform Agent of Litigation Risks in Sale of Policy — Summary Judgment Inappropriate: An insured brought an action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. The agent cross-claimed against the company for indemnity and breach of fiduciary duty, contending that there was a significant amount of evidence that Revere planned to assert the Forman defense in Montana (see Mass. Cas. Ins. Co. v. Forman, 516 F2d 425 (5th Cir. 1975), in which an insurer asserts a legal defense to the incontestability clause based on its definition of sickness as excluding disabilities that manifested themselves prior to the date of issue of the policy) and that Revere's failure to inform Deonier of its intention to invoke the defense was a clear breach of Revere's duty to inform its agents of a risk of pecuniary loss from potential lawsuits. Revere asserted that, pursuant to Doettl v. Colonial Life & Accident Ins. Co., 505 F. Supp. 127 (D.C. Mont. 1981), in which a Montana federal District Court endorsed the Forman defense, it had no reason to believe that its policy interpretation might be in violation of Montana law and therefore did not breach its duty to inform its agents of risk of pecuniary loss. The District Court found that Revere owed Deonier a fiduciary duty pursuant to Restatement (Second) of Agency 435 (1958), but, apparently applying 33-18-242, determined that Revere did not breach that duty and dismissed the breach of fiduciary duty action by summary judgment. On appeal, the Supreme Court found the application of 33-18-242 to be misplaced, the proper analysis being simply whether Revere breached Restatement (Second) of Agency 435 (1958). The Supreme Court agreed that a principal has no duty to inform its agent of unknown future legal positions, but in this case, the potential consequences of applying the Forman defense were not unknown, having been the subject of a Revere corporate counsel paper published in 1987, years before the disability policy at issue in this case was issued. The court also found Revere's argument based on Doettl to be without merit. Although Doettl applied some Montana law, it was not binding on the Montana Supreme Court. Because the issue was still one of first impression in Montana, Revere could not rely on Doettl to support its position that as a matter of uncontroverted fact and law, it had no knowledge of risk to its agents. Thus, the question of whether Revere breached its duty to inform Deonier of the risks of litigation involved issues of material fact, so the District Court's award of summary judgment to Revere was reversible error. Deonier & Associates v. Paul Revere Life Ins. Co., 2000 MT 238, 301 M 347, 9 P3d 622, 57 St. Rep. 989 (2000).

Policy Definitions Conflicting With Incontestability Provision — Assertion of Forman Defense Violative of Montana Law: An insured brought an action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. The agent cross-claimed against the company for indemnity and breach of fiduciary duty, contending that Revere planned to assert the Forman defense in Montana (see Mass. Cas. Ins. Co. v. Forman, 516 F2d 425 (5th Cir. 1975), in which an insurer asserts a legal defense to the incontestability clause based on its definition of sickness as excluding disabilities that manifested themselves prior to the date of issue of the policy). The District Court declined to decide the issue of the legality of Revere's disability policy, holding that Revere was entitled to assert the Forman defense and that any opinion concerning the interpretation of the policy would be an inappropriate advisory opinion. The Supreme Court found that the question of whether the policy definitions conflicted with the statutorily required incontestability clause was a question of law on which Deonier's punitive damages claim rested and thus did not constitute an inappropriate advisory opinion. Because the incontestability clause is required by statute, interpretation of language in the clause must be construed to effectuate legislative intent, not the intent of the parties, and the incontestability clause takes precedence over other language in the policy. In this case, the definitional and coverage provisions purported to limit available coverage to disabilities caused by sickness or disease that first manifested after the date on which the policy was issued and to exclude coverage for preexisting conditions that were not disclosed on the application; at the same time, the incontestability clause barred the insurer from denying coverage because a sickness or physical condition had existed before the date on which the policy was issued, creating a conflict in which the incontestability clause must control. Consequently, Revere's assertion of the Forman defense violated Montana law, and denial of coverage for a disability, whether or not the causative sickness first manifested itself before the policy's date of issue, was barred by the incontestability clause. Deonier & Associates v. Paul Revere Life Ins. Co., 2000 MT 238, 301 M 347, 9 P3d 622, 57 St. Rep. 989 (2000), following Galanty v. Paul Revere Life Ins. Co., 1 P3d 658 (Calif. 2000).

33-22-204. Entire contract — changes.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 3(A)(1) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-205. Time limit on certain defenses.

Compiler's Comments

1981 Amendment: Decreased the time limit on defenses from 3 years to 2 years in five places.

Source: Section 3(A)(2) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

Case Notes

Material Misrepresentation on Application for Credit Life and Disability Insurance — Denial of Coverage Warranted: Schlemmer applied to the North Central Life Insurance Company (North Central) for credit life and disability insurance but misrepresented his health history. If he had answered correctly on the application, he would have been ineligible for the insurance. Nevertheless, he averred by his signature that he understood the form and that his application statements were true, so the policy was issued. Schlemmer later filed a claim for disability payments. North Central investigated, found that Schlemmer had been treated within the previous 2 years for hypertension, chronic obstructive lung disease, and disease or disorder of the kidneys, contrary to his statements in the application, and denied the claim and refunded Schlemmer's premiums. Schlemmer sued for damages, claiming that the application and underwriting procedures used by North Central violated 33-18-201, commonly known as the unfair claims settlement practices law, breached the covenant of good faith and fair dealing, and constituted fraud. Schlemmer also maintained that the District Court erred in failing to rule on whether North Central's agent had knowledge of Schlemmer's condition, which might have created a question of material fact. The Supreme Court affirmed the District Court's rulings that: (1) Schlemmer's claim of ignorance of the contents of the written application could not prevail because the application language was clear and unambiguous and Schlemmer did not deny signing it; (2) Schlemmer materially misrepresented his health on the application; (3) the material misrepresentation was legally sufficient to allow North Central to deny coverage under the policy; and (4) Schlemmer's argument that North Central's agent knew or should have known about Schlemmer's health was mere speculation insufficient to create an issue of fact to defeat North Central's properly supported motion for summary judgment. Further, the Supreme Court declined to consider Schlemmer's argument that the misrepresentation could not serve as a basis to rescind the policy because he did not apply for benefits until more than 2 years after applying for the insurance, pursuant to this section, because Schlemmer never raised the issue at the District Court level. Schlemmer v. N. Cent. Life Ins. Co., 2001 MT 256, 307 M 203, 37 P3d 63 (2001).

Forman Defense — Issues of Material Fact Regarding Whether Insurance Company Breached Duty to Inform Agent of Litigation Risks in Sale of Policy — Summary Judgment Inappropriate: An insured brought an action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. The agent cross-claimed against the company for indemnity and breach of fiduciary duty, contending that there was a significant amount of evidence that Revere planned to assert the Forman defense in Montana (see Mass. Cas. Ins. Co. v. Forman, 516 F2d 425 (5th Cir. 1975), in which an insurer asserts a legal defense to the incontestability clause based on its definition of sickness as excluding disabilities that manifested themselves prior to the date of issue of the policy) and that Revere's failure to inform Deonier of its intention to invoke the defense was a clear breach of Revere's duty to inform its agents of a risk of pecuniary loss from potential lawsuits. Revere asserted that, pursuant to Doettl v. Colonial Life & Accident Ins. Co., 505 F. Supp. 127 (D.C. Mont. 1981), in which a Montana federal District Court endorsed the Forman defense, it had no reason to believe that its policy interpretation might be in violation of Montana law and therefore did not breach its duty to inform its agents of risk of pecuniary loss. The District Court found that Revere owed Deonier a fiduciary duty pursuant to Restatement (Second) of Agency 435 (1958), but, apparently applying 33-18-242, determined that Revere did not breach that duty and dismissed the breach of fiduciary duty action by summary judgment. On appeal, the Supreme Court found the application of 33-18-242 to be misplaced, the proper analysis being simply whether Revere breached Restatement (Second) of Agency 435 (1958). The Supreme Court agreed that a principal has no duty to inform its agent of unknown future legal positions, but in this case, the potential consequences of applying the Forman defense were not unknown, having been the subject of a Revere corporate counsel paper published in 1987, years before the disability policy at issue in this case was issued. The court also found Revere's argument based on Doettl to be without merit. Although Doettl applied some Montana law, it was not binding on the Montana Supreme Court. Because the issue was still one of first impression in Montana, Revere could not rely on Doettl to support its position that as a matter of uncontroverted fact and law, it had no knowledge of risk to its agents. Thus, the question of whether Revere breached its duty to inform Deonier of the risks of litigation involved issues of material fact, so the District Court's award of summary judgment to Revere was reversible error. Deonier & Associates v. Paul Revere Life Ins. Co., 2000 MT 238, 301 M 347, 9 P3d 622, 57 St. Rep. 989 (2000).

Policy Definitions Conflicting With Incontestability Provision — Assertion of Forman Defense Violative of Montana Law: An insured brought an action against Deonier, an insurance agent, and Paul Revere Life Insurance Company (Revere) to recover benefits and damages after the insured's claim was denied on grounds of a preexisting condition, despite the incontestability clause in the policy. The agent cross-claimed against the company for indemnity and breach of fiduciary duty, contending that Revere planned to assert the Forman defense in Montana (see Mass. Cas. Ins. Co. v. Forman, 516 F2d 425 (5th Cir. 1975), in which an insurer asserts a legal defense to the incontestability clause based on its definition of sickness as excluding disabilities that manifested themselves prior to the date of issue of the policy). The District Court declined to decide the issue of the legality of Revere's disability policy, holding that Revere was entitled to assert the Forman defense and that any opinion concerning the interpretation of the policy would be an inappropriate advisory opinion. The Supreme Court found that the question of whether the policy definitions conflicted with the statutorily required incontestability clause was a question of law on which Deonier's punitive damages claim rested and thus did not constitute an inappropriate advisory opinion. Because the incontestability clause is required by statute, interpretation of language in the clause must be construed to effectuate legislative intent, not the intent of the parties, and the incontestability clause takes precedence over other language in the policy. In this case, the definitional and coverage provisions purported to limit available coverage to disabilities caused by sickness or disease that first manifested after the date on which the policy was issued and to exclude coverage for preexisting conditions that were not disclosed on the application; at the same time, the incontestability clause barred the insurer from denying coverage because a sickness or physical condition had existed before the date on which the policy was issued, creating a conflict in which the incontestability clause must control. Consequently, Revere's assertion of the Forman defense violated Montana law, and denial of coverage for a disability, whether or not the causative sickness first manifested itself before the policy's date of issue, was barred by the incontestability clause. Deonier & Associates v. Paul Revere Life Ins. Co., 2000 MT 238, 301 M 347, 9 P3d 622, 57 St. Rep. 989 (2000), following Galanty v. Paul Revere Life Ins. Co., 1 P3d 658 (Calif. 2000).

33-22-206. Grace period.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 3(A)(3) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-207. Reinstatement.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 3(A)(4) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-208. Notice of claim.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Source: Section 3(A)(5) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

Case Notes

Proof of Loss Distinguished: The terms "notice" and "proof of loss", within the meaning of a life insurance policy requiring both from one claiming disability benefits, are frequently used interchangeably, but they are distinct, proof of loss being more formal and definite. This is made clear in the case of Da Rin v. Cas. Co. of Am., 41 M 175, 108 P 649 (1910), but prompt proof of loss may answer for notice. Conlon v. N. Life Ins. Co., 108 M 473, 92 P2d 284 (1939).

33-22-209. Claim forms.

Compiler's Comments

Source: Section 3(A)(6) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-210. Proofs of loss.

Compiler's Comments

Source: Section 3(A)(7) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

Case Notes

Form of Proof: "Due proof of loss" as a condition precedent to the right of recovery of any loss arising under a life insurance policy providing for disability benefits does not require any particular form or proof which the insurer might arbitrarily demand, but such a statement of facts which, if established, would prima facie require payment of the claim. Conlon v. N. Life Ins. Co., 108 M 473, 92 P2d 284 (1939).

Insufficient Proof of Loss: A letter received by an insurance company on the date of insured's death advising of insured's illness, one received on the following day asking for blanks on which to submit proof of loss of time due to sickness, and one advising the company of insured's death were held insufficient as formal proof of disability required under sick benefit provisions of life insurance policy. Conlon v. N. Life Ins. Co., 108 M 473, 92 P2d 284 (1939).

Temporary Disability — Recovery Through Presumption of Permanent Disability: Under a life insurance policy covering disability losses and declaring that total disability should be presumed to be permanent, inter alia, if it had existed for 90 days, the insured was entitled to receive disability payments so long as his disability continued even though he was gainfully employed when he instituted the action, as against the contention of insurer that benefits were payable only in case of absolutely permanent disability. DeVore v. Mut. Life Ins. Co., 103 M 599, 64 P2d 1071 (1937).

Degree of Proof Required: Where preliminary proof is required under an insurance policy, the insured is not bound to give such proof as is necessary in a court of justice, the best evidence within his power to give at the time being sufficient to put the insurer upon inquiry to determine whether he is liable. Caldwell v. Wash. Fidelity Nat'l Ins. Co., 94 M 431, 23 P2d 257 (1933); Wick v. W. Life & Cas. Co., 60 M 553, 199 P 272 (1921).

Failure to Object to Insufficient Proof — Waiver of Defects: Where the insured has attempted to make proof of loss, even though it be insufficient or defective, the burden is cast upon the insurance company to make objection thereto, or it will be considered to have waived the defect or insufficiency. Caldwell v. Wash. Fidelity Nat'l Ins. Co., 94 M 431, 23 P2d 257 (1933).

33-22-211. Time of payment of claims.

Compiler's Comments

2021 Amendment: Chapter 471 in first sentence following introductory clause substituted "pursuant to 33-18-232" for "immediately". Amendment effective July 1, 2021.

Source: Section 3(A)(8) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

Case Notes

Exemplary and Punitive Damages — Insurer Maliciously Avoids Payment: If insurance company stalled payment on claim deliberately, and ultimately failed to pay, breach of insurance contract was also violation of insurance code, and punitive damages could be awarded. Helton v. Reserve Life Ins. Co., 399 F. Supp. 1322 (D.C. Mont. 1975).

Criminal Penalty: Separate penalty provided in 33-1-104 (now repealed) is applicable to violation of this section where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P2d 598 (1967), distinguished in State ex rel. Cashen v. District Court, 157 M 40, 482 P2d 567 (1971).

Tort Liability for Failure to Promptly Pay: See First Sec. Bank v. Goddard, 181 M 407, 593 P2d 1040 (1979).

Credit Disability Insurance — Punitive Damages Not Barred: The District Court erred in granting the defendant insurer's motion to strike the plaintiff's claim for punitive damages arising out of the defendant's refusal to pay on a credit disability insurance policy. The general rule that exemplary damages are not allowed in actions arising out of breach of contract would not preclude award of exemplary damages where acts constituting alleged breach of contract also violated state law. State ex rel. Larson v. District Court, 149 M 131, 423 P2d 598 (1967), distinguished in State ex rel. Cashen v. District Court, 157 M 40, 482 P2d 567 (1971).

Prompt Payment of Claims: Separate penalty provided in 33-1-104 (now repealed) is applicable to violation of 33-22-211 where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P2d 598 (1967), distinguished in State ex rel. Cashen v. District Court, 157 M 40, 482 P2d 567 (1971).

33-22-212. Payment of claims.

Compiler's Comments

Source: Section 3(A)(9) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-213. Physical examination and autopsy.

Compiler's Comments

Source: Section 3(A)(10) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-214. Legal actions.

Compiler's Comments

Source: Section 3(A)(11) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-215. Change of beneficiary.

Compiler's Comments

Source: Section 3(A)(12) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-221. Optional policy provisions — substitutes.

Compiler's Comments

2019 Amendment: Chapter 26 in first and second sentences substituted current text for former text that read: "Except as provided in 33-22-202(2), no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in 33-22-222 through 33-22-231, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary"; and made minor changes in style. Amendment effective February 28, 2019.

Source: Section 3(B) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

Case Notes

Car Rental Policy as Individual Disability Policy: A car rental agreement that provided a renter with coverage for accidental death arising from operation during the rental period contained a provision excluding coverage if the renter suffered a loss caused directly or indirectly by intoxicants. Because the policy was characterized as an individual rather than group disability insurance policy, the "intoxicants exclusion" was rendered ineffective because the language was not approved by the Insurance Commissioner as required by this section. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

33-22-222. Change of occupation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 3(B)(1) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-223. Misstatement of age.

Compiler's Comments

Source: Section 3(B)(2) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-224. Other insurance in this insurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 3(B)(3) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-225. Insurance with other insurers — provision of service or expense incurred basis.

Compiler's Comments

Source: Section 3(B)(4) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-226. Insurance with other insurers — other benefits.

Compiler's Comments

Source: Section 3(B)(5) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-227. Relation of earnings to insurance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 3(B)(6) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-228. Unpaid premiums.

Compiler's Comments

Source: Section 3(B)(7) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-229. Conformity with state statutes.

Compiler's Comments

1991 Amendment: Substituted present language providing that the provisions of policy conform to Montana law and control conflicting statutes of any state in which insured resides on or after effective date of policy for former language that read: "Any provision of this policy which on its effective date is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statute".

1983 Amendment: Changed "may" in lead-in to "must".

Source: Section 3(B)(8) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-230. Illegal occupation.

Compiler's Comments

Source: Section 3(B)(9) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-232. Renewal at option of insurer.

Compiler's Comments

2009 Amendment: Chapter 271 in (1) at beginning of first sentence inserted exception clause, in second sentence near beginning after "subject to the" inserted "insurer's"; inserted (2) providing that conforming policies are subject to guaranteed renewability provisions; and made minor changes in style. Amendment effective July 1, 2009.

1981 Amendment: Deleted "on an individual basis" after "right to refuse renewal" near the beginning of the section.

Source: Section 3(A)(3) of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-241. Definitions.

Compiler's Comments

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

Effective Date: Section 16, Ch. 527, L. 1995, provided that this section is effective January 1, 1996.

33-22-242. Waiver of preexisting condition exclusion — exclusion prohibited.

Compiler's Comments

1997 Amendment: Chapter 416 inserted (2) prohibiting application of preexisting condition exclusion for federally defined eligible individual; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8 [section 7 is 33-22-242], 17 through 40, and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

Effective Date: Section 16, Ch. 527, L. 1995, provided that this section is effective January 1, 1996.

33-22-243. Premium increases to be distributed proportionately.

Compiler's Comments

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

Effective Date: Section 16, Ch. 527, L. 1995, provided that this section is effective January 1, 1996.

33-22-244. Disclosure standards — individual policy.

Compiler's Comments

2009 Amendment: Chapter 207 inserted (2)(f) requiring that the outline of coverage must include a description of any preauthorization or other preapproval requirements for medical care; and made minor changes in style. Amendment effective January 1, 2010.

2007 Amendment: Chapter 463 inserted (5) requiring provision of written informational material. Amendment effective January 1, 2008.

Preamble: The preamble attached to Ch. 463, L. 2007, provided: "WHEREAS, early detection of cancer can save lives and improve and increase treatment options for patients; and

WHEREAS, screening tests for cancer are the main tool for early detection of cancer; and

WHEREAS, health insurers may not routinely provide information on the coverage provided for cancer screenings; and

WHEREAS, state law requires health insurers to provide a summary of benefits offered to consumers; and

WHEREAS, because of the importance of early detection, consumers deserve and will benefit from information about the types of cancer screenings that a policy covers."

2001 Amendment: Chapter 336 in (1) near end after "coverage is" inserted "filed with and approved by the insurance commissioner in accordance with 33-1-501 and is"; inserted (2)(f) concerning prominent display of responsibility for payment of billed charges beyond those reimbursed; and made minor changes in style. Amendment effective January 1, 2002.

Saving Clause: Section 5, Ch. 336, L. 2001, was a saving clause.

Effective Date — Applicability: Section 6, Ch. 336, L. 2001, provided: "[This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date."

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

Effective Date: Section 16, Ch. 527, L. 1995, provided that this section is effective January 1, 1996.

33-22-246. Preexisting conditions relating to individual market.

Compiler's Comments

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 37 is 33-22-246], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40 [section 37 is 33-22-246], and 42 through 44] are effective July 1, 1997."

33-22-247. Guaranteed renewability of individual health insurance coverage.

Compiler's Comments

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 38 is 33-22-247], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40 [section 38 is 33-22-247], and 42 through 44] are effective July 1, 1997."

Source: 42 U.S.C. 300gg-42.

Part 3

Requirements for Certain Individual Coverages

33-22-301. Coverage of newborn under disability policy.

Compiler's Comments

2017 Amendment: Chapter 151 in (2) after "However" deleted "that". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2003 Amendment: Chapter 325 in (1) and (3) inserted exception clause; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2009.

1995 Amendment: Chapter 379 in (4) substituted language concerning notice and fee payment to extend coverage after birth of a child for "If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1987 Amendment: Near beginning of (2) substituted "must" for "shall".

1981 Amendment: Deleted "which in addition to covering the insured also covers members of the insured's family" after "issued thereunder" in (1) and after "certificate of insurance" in (3); added (4) allowing policies to require notification of birth within 31 days.

33-22-302. Age limits — effect on coverage.

Compiler's Comments

2009 Amendment: Chapter 271 in (1)(a) at beginning inserted exception clause; inserted (1)(b) providing that conforming policies are subject to guaranteed renewability provisions; and made minor changes in style. Amendment effective July 1, 2009.

Source: Section 7 of the Uniform Accident and Sickness Policy Provisions Law, promulgated by the National Association of Insurance Commissioners in 1950, amended in 1956, 1963, and 1964. All states except Wisconsin have adopted this Uniform Law.

33-22-303. Coverage for well-child care.

Compiler's Comments

2007 Amendment: Chapter 390 in (1) near end of first sentence increased requirement for well-care coverage for children from birth through age 2 to birth through age 7. Amendment effective January 1, 2008.

Applicability: Section 8, Ch. 390, L. 2007, provided: "[This act] applies to policies, certificates, evidence of coverage, and plans issued or renewed on or after January 1, 2008."

2003 Amendment: Chapter 380 in (4) after "specified disease" inserted "accident-only"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 379 in (1), near beginning, inserted "medical expense".

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Severability: Section 5, Ch. 199, L. 1991, was a severability clause.

Applicability: Section 6, Ch. 199, L. 1991, provided: "[This act] applies to individual or group disability policies or plans issued or renewed on or after October 1, 1991, by a disability insurer or health service corporation."

33-22-304. Continuation of coverage for individuals with disabilities — individual contracts.

Compiler's Comments

2013 Amendment: Chapter 68 in (1) substituted "intellectual disability" for "mental retardation" and substituted "Proof of intellectual disability or physical disability" for "Proof of retardation or the disability". Amendment effective October 1, 2013.

1997 Amendment: Chapter 472 in (1), in first sentence near beginning after "issued for delivery in this state", deleted "after October 28, 1971" and near end substituted "disability" for "handicap" and at beginning of second sentence substituted "retardation or the disability" for "incapacity"; and made minor changes in style.

33-22-305. Short title.

Compiler's Comments

Applicability: Section 9, Ch. 245, L. 1981, provided: "The provisions of this act apply to individual family disability insurance policies providing hospital, surgical, and medical expense benefits or hospital confinement indemnity benefits and individual family health service corporation contracts delivered or issued for delivery in this state on and after 120 days after the effective date of this act. This act does not apply to disability income policies, accidental death or dismemberment policies, or single-term nonrenewable policies." The act was effective October 1, 1981, 120 days thereafter being January 29, 1982.

Source: Sections 33-22-305 through 33-22-311 were derived from Individual Family Disability Insurance Continuity of Coverage Act, drafted by the Health Insurance Association of America, February 1977.

33-22-307. Continuity of coverage.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) near beginning of introductory clause after "terminates" inserted "because of the death of the named insured or for any other reason specified in 33-22-306"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-22-312. Limitations on cost sharing for insulin.

Compiler's Comments

Effective Date: Section 5, Ch. 463, L. 2023, provided: "[This act] is effective January 1, 2024."

Applicability: Section 6, Ch. 463, L. 2023, provided: "[This act] applies to plans and policies issued on or after January 1, 2024."

33-22-316. Coverage for self-management training and education for treatment of diabetes.

Compiler's Comments

Effective Date: Section 6, Ch. 520, L. 2023, provided: "[This act] is effective January 1, 2024."

Part 5
Group Disability Insurance

33-22-501. Group disability insurance defined — eligible groups.

Compiler's Comments

1995 Amendment: Chapter 375 in (2), near beginning after "union", deleted "which shall have a constitution and bylaws"; inserted (5) allowing issuance of a policy to a voluntary purchasing pool formed solely to obtain insurance; and made minor changes in style.

Case Notes

Car Rental Policy as Individual Disability Policy: A car rental agreement that provided a renter with coverage for accidental death arising from operation during the rental period contained a provision excluding coverage if the renter suffered a loss caused directly or indirectly by intoxicants. Because the policy was characterized as an individual rather than group disability insurance policy, the "intoxicants exclusion" was rendered ineffective because the language was not approved by the Insurance Commissioner as required by 33-22-221. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

Insurer May Not Decide Group Eligibility: An insurer may not unilaterally determine the eligibility of a purported group for treatment as a group under the Montana Insurance Code. Rather, this section ensures that only those nonenumerated groups expressly sanctioned by the Insurance Commissioner are eligible for treatment as a group. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

33-22-502. Required provisions of group policies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Near beginning substituted "delivered or issued for delivery in this state must" for "shall"; inserted (4) requiring policy to contain a provision relating to conformity with Montana statutes; and made minor changes in style.

Administrative Rules

Title 6, chapter 6, subchapter 24, ARM Group coordination of benefits.

Case Notes

Notice Requirement of Exclusionary Clause Added to Later Group Contract: Where group medical insurer added an exclusionary clause to group policy, in subsequent year, that "experimental" and "unacceptable medical practice" would not be covered but did not notify beneficiaries, a denial of a claim under that clause was improper and in effect revived terms of prior contract without exclusionary clause based on simple fairness and equity to beneficiaries. Fassio v. Mont. Physician's Serv., 170 M 320, 553 P2d 998 (1976).

33-22-504. Newborn infant coverage.

Compiler's Comments

1997 Amendment: Chapter 416 in (1), near middle, inserted "preexisting condition exclusion". Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8 [33-22-504], 17 through 40, and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

1995 Amendment: Chapter 379 in (1), after "insurance", substituted "delivered or issued for delivery in this state" for "which, in addition to covering persons in the insured group, also covers members of such person's family"; in (2) substituted "A policy or certificate subject to this section must contain a provision" for "If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it shall contain an additional provision"; inserted (4) concerning application of this section to Medicare supplement policies; inserted (5) concerning when a policy or certificate is considered delivered in this state; inserted (6) concerning notification of birth and payment of fee to have coverage extended; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1987 Amendment: In (1) and (2), at end, substituted "covered under the policy" for "in the insured group".

Case Notes

Notice Requirement of Exclusionary Clause Added to Later Group Contract: Where group medical insurer added an exclusionary clause to group policy, in subsequent year, that "experimental" and "unacceptable medical practice" would not be covered but did not notify beneficiaries, a denial of a claim under that clause was improper and in effect revived terms of prior contract. Fassio v. Mont. Physician's Serv., 170 M 320, 553 P2d 998 (1976).

33-22-506. Continuation of coverage for persons with disabilities — group contracts.

Compiler's Comments

2013 Amendment: Chapter 68 in (1) substituted "intellectual disability" for "mental retardation" and substituted "Proof of intellectual disability or physical disability" for "Proof of retardation or the disability". Amendment effective October 1, 2013.

1997 Amendment: Chapter 472 in (1), in first sentence near beginning after "issued for delivery in this state", deleted "after October 28, 1971" and near end substituted "disability" for "handicap" and at beginning of second sentence substituted "retardation or the disability" for "incapacity"; and made minor changes in style.

33-22-507. Continuing group coverage after reduction of work schedule.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Codification: This section is codified as both 33-22-507 and 33-30-1006.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

33-22-508. Conversion on termination of eligibility.

Compiler's Comments

2011 Amendment: Chapter 227 at beginning of (1) after "insurance" deleted "delivered or issued for delivery or renewed after October 1, 1981"; in (6) deleted former second sentence that read: "If the insurer or conversion carrier is not a small employer carrier under part 18, the insurer shall make available a conversion policy, certificate, or membership contract that provides equivalent benefits to a basic health benefit plan as provided in 33-22-1827"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

2005 Amendment: Chapter 469 in (6) at beginning of second sentence after "insurer" inserted "or conversion carrier" and at end after "plan" inserted "as provided in 33-22-1827" and inserted fourth sentence providing that subsection (6) does not apply to disability plans that provide only excepted benefits; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 227 in (1) near beginning after "policy ceases because of termination" substituted "of the person's membership in a group eligible for coverage under the policy, because of termination of the person's employment" for "of the person's employment or of the person's membership in the class or classes eligible for coverage under the policy", near middle substituted "group disability coverage or an individual disability policy" for "group coverage or an individual policy", and after "absence of an individual" substituted "disability policy issued by the insurer, a group disability policy issued by the insurer" for "policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance"; inserted (2) regarding conversion carriers; in (3) near middle of second sentence after "insurer" inserted "or conversion carrier"; in (4) at end of first sentence substituted "group policy being terminated at the time of the conversion" for "coverage of the individual or group policy" and at end of second sentence after "rate" inserted "of the policy being terminated at the time of the conversion"; inserted (5) requiring a conversion carrier to offer an individual or group conversion policy that provides the same schedule of benefits and covers the same eligible expenses as those being terminated; in (6) at beginning after "The insurer" inserted "or conversion carrier"; inserted (7) regarding the effective date and time of the conversion policy; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 228 inserted second sentence in (3) prohibiting premium in excess of 150% of customary rate if person entitled to conversion has been insured for more than 3 years. Amendment effective October 1, 1999.

Applicability: Section 3, Ch. 228, L. 1999, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after January 1, 2000."

1997 Amendment: Chapter 531 in (4), in first sentence after "shall", inserted "also", after "available" substituted "a" for "an individual", after "policy" inserted "certificate, or membership contract", and after "provides" inserted "at least" and in second sentence, after "available", substituted "a" for "an individual" and after "policy" inserted "certificate, or membership contract".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 379 in (1), near beginning before "or renewed", substituted "policy or certificate of insurance delivered or issued for delivery" for "policy issued" and near middle, after "individual policy", deleted "issued by the insurer"; and made minor changes in style.

Chapter 527 in (2) inserted last sentence referring to conversion policy; in (3), in first sentence, substituted "must be at no more than 200% of the insurer's then customary rate" for "must be at the insurer's then customary rate" and inserted second sentence defining customary rate; inserted (4) requiring individual conversion policy; and made minor changes in style. Amendment effective January 1, 1996.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

1991 Amendments: Chapter 200 in (1), near middle after "3 months", inserted "and he is not insured under another major medical disability insurance policy or plan".

Chapter 699 throughout section inserted reference to group coverage or policy; and made minor changes in style.

Saving Clause: Section 6, Ch. 200, L. 1991, was a saving clause.

1987 Amendment: In (1), near middle after "business", inserted "or as a result of his employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan".

Codification: This section is codified as both 33-22-508 and 33-30-1007.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

Case Notes

Accidental Death Coverage Considered Life Insurance for Purposes of Conversion Rights: Golt worked as a civilian employee of the Army and Air Force Exchange Service (AAFES) until he was discharged from employment in 1994 for cause. Thirty days after termination, Golt died of carbon monoxide poisoning. As a benefit of employment, Golt was covered by an accident insurance policy issued by General American Life Insurance Company (General), which provided that if he died while covered by the policy, his estate was eligible to receive $200,000. The policy also provided that coverage would terminate on the first premium due date after Golt ceased to be an employee, which in this case was 6 days after Golt was terminated from employment. The General policy also allowed the group accident policy to be converted to an individual policy within 31 days of discharge upon written application and payment of the first premium. In addition to the General policy, Golt was also insured by Aetna Life Insurance Company (Aetna) under a group life and accident and health insurance policy, which provided a life insurance benefit of $32,000 if Golt died from any cause while insured, plus an accidental death benefit of $32,000 in the event of Golt's accidental death. The Aetna policy provided that coverage ceased upon termination of employment, but allowed the group life insurance policy to be converted to individual life insurance within 31 days of discharge and provided that if Golt died during that period, benefits would be payable. AAFES transmitted the Aetna claim, which paid $32,000 under the life insurance provisions but denied the claim for accidental death benefits on grounds that the coverage ended when employment was terminated. AAFES did not transmit the General claim. A subsequent request for benefits from General was denied because the claim was not submitted within 20 days after the covered loss occurred. Golt's wife commenced an action in 1996 in federal court, seeking accidental death benefits from both Aetna and General. The federal District Court concluded that there was no coverage under either policy and entered final judgment in favor of the insurers. In 1999, the Supreme Court agreed to address three questions certified by the Ninth Circuit Court of Appeals pursuant to former Rule 44, M.R.App.P. (now superseded), regarding the Montana statutory definitions of life insurance for purposes of determining an insured's conversions rights. The Supreme Court held that under 33-1-205, an insurance coverage may come within the definition of two kinds of insurance. Therefore, although accidental death coverage is disability insurance, for purposes of conversion rights, it is also life insurance as defined in 33-1-208. As life insurance, accidental death coverage is subject to a 31-day conversion right upon termination of coverage pursuant to 33-20-1209 and, in the event of death within the 31-day conversion period, is subject to automatic conversion under 33-20-1211. With regard to Golt's policies, the accidental death policy remained in effect, even when Golt died during the 31-day grace period without exercising the right to convert the policy by making application and paying the first premium. Golt v. Aetna Life Ins. Co., 2000 MT 155, 300 M 142, 2 P3d 841, 57 St. Rep. 613 (2000).

Choice of Conversion Policies Limited to Policies Offered in State: Greany argued that the District Court's construction of the conversion statute essentially added "in the State of Montana" after "customarily issued". The Ninth Circuit Court held that the interpretation was reasonable, otherwise an insurer would be required to offer policies that potentially could subject the insurer to liability for not being in compliance with applicable Montana Law. Greany v. W. Farm Bureau Life Ins. Co., 973 F2d 812 (1992).

33-22-509. Preexisting conditions.

Compiler's Comments

1987 Amendment: Inserted last clause concerning pregnancy inclusion at time of conversion.

Codification: This section is codified as both 33-22-509 and 33-30-1008.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

33-22-510. Insured's family — conversion entitlement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Codification: This section is codified as both 33-22-510 and 33-30-1009.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

33-22-511. Applicability.

Compiler's Comments

Codification: This section is codified as both 33-22-511 and 33-30-1021.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

33-22-512. Coverage for well-child care.

Compiler's Comments

2007 Amendment: Chapter 390 in (1) near end of first sentence increased requirement for well-care coverage for children from birth through age 2 to birth through age 7. Amendment effective January 1, 2008.

Applicability: Section 8, Ch. 390, L. 2007, provided: "[This act] applies to policies, certificates, evidence of coverage, and plans issued or renewed on or after January 1, 2008."

2003 Amendment: Chapter 380 in (4) after "specified disease" inserted "accident-only" and at end after "policies" inserted "or certificates"; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 5, Ch. 199, L. 1991, was a severability clause.

Applicability: Section 6, Ch. 199, L. 1991, provided: "[This act] applies to individual or group disability policies or plans issued or renewed on or after October 1, 1991, by a disability insurer or health service corporation."

33-22-513. Limitation of eligibility on conversion.

Compiler's Comments

2007 Amendment: Chapter 399 throughout section substituted reference to individual for reference to person; deleted former (1) that read: "(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395"; and made minor changes in style. Amendment effective May 3, 2007.

Saving Clause: Section 6, Ch. 200, L. 1991, was a saving clause.

33-22-514. Preexisting conditions relating to group market.

Compiler's Comments

1999 Amendment: Chapter 472 in (1)(b) at end after "12 months" inserted "or 18 months in the case of a late enrollee". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 39 is 33-22-514], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40 [section 39 is 33-22-514], and 42 through 44] are effective July 1, 1997."

Source: 42 U.S.C. 300gg and gg(a).

33-22-515. Coverage of autism spectrum disorders.

Compiler's Comments

Saving Clause: Section 7, Ch. 359, L. 2009, was a saving clause.

Effective Date: Section 8, Ch. 359, L. 2009, provided: "[This act] is effective January 1, 2010."

Applicability: Section 9, Ch. 359, L. 2009, provided: "[This act] applies to contracts or policies issued or renewed on or after [the effective date of this act]." Effective January 1, 2010.

33-22-521. Disclosure standards — group policy.

Compiler's Comments

2009 Amendment: Chapter 207 inserted (2)(f) requiring that the outline of coverage must include a description of any preauthorization or other preapproval requirements for medical care; and made minor changes in style. Amendment effective January 1, 2010.

2007 Amendment: Chapter 463 inserted (7) requiring provision of written informational material. Amendment effective January 1, 2008.

Preamble: The preamble attached to Ch. 463, L. 2007, provided: "WHEREAS, early detection of cancer can save lives and improve and increase treatment options for patients; and

WHEREAS, screening tests for cancer are the main tool for early detection of cancer; and

WHEREAS, health insurers may not routinely provide information on the coverage provided for cancer screenings; and

WHEREAS, state law requires health insurers to provide a summary of benefits offered to consumers; and

WHEREAS, because of the importance of early detection, consumers deserve and will benefit from information about the types of cancer screenings that a policy covers."

2001 Amendment: Chapter 336 in (1) near end after "coverage is" inserted "filed with and approved by the insurance commissioner in accordance with 33-1-501 and is"; inserted (2)(f) concerning prominent display of responsibility for payment of billed charges beyond those reimbursed; inserted (6) requiring sending outline of coverage to employee at time certificate is sent; and made minor changes in style. Amendment effective January 1, 2002.

Saving Clause: Section 5, Ch. 336, L. 2001, was a saving clause.

Effective Date — Applicability: Section 6, Ch. 336, L. 2001, provided: "[This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date."

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

Effective Date: Section 16, Ch. 527, L. 1995, provided that this section is effective January 1, 1996.

33-22-523. Special enrollment periods.

Compiler's Comments

1999 Amendment: Chapter 472 in (2) at end of first sentence after "individual" inserted "if the person becomes a dependent of the individual through marriage, birth, adoption, or placement for adoption"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 35 is 33-22-523], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40 [section 35 is 33-22-523], and 42 through 44] are effective July 1, 1997."

Source: 42 U.S.C. 300gg(f).

33-22-524. Guaranteed renewability of coverage for employers in group market.

Compiler's Comments

1999 Amendment: Chapter 472 in (2)(c) at end after "rules" deleted "in the case of the small group market or pursuant to applicable state law in the case of the large group market". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [33-22-524], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40 [33-22-524], and 42 through 44] are effective July 1, 1997."

Source: 42 U.S.C. 300gg-12.

33-22-525. Guaranteed renewability in multiple employer welfare arrangements.

Compiler's Comments

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40, and 42 [33-22-525] through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40, and 42 [33-22-525] through 44] are effective July 1, 1997."

33-22-526. Group health discrimination prohibited.

Compiler's Comments

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40, and 42 through 45 [section 44 is 33-22-526]] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40, and 42 through 44 [33-22-526]] are effective July 1, 1997."

Source: 42 U.S.C. 300gg-1.

Case Notes

Preemption — State HIPAA and Unfair Trade Practices Act Claims: Plaintiff insureds claimed that the defendant insurer's premium increases violated Montana's Unfair Trade Practices Act, specifically 33-18-206, and 33-22-526, Montana's "little HIPAA" law. The federal District Court denied the plaintiffs' motion to remand to state court and granted the defendant summary judgment on both claims. On appeal, the Ninth Circuit Court of Appeals held that the state unfair insurance practices law was not preempted by federal law because it creates a separate right that cannot be remedied under federal law, but that federal HIPAA law preempted the Montana HIPAA law, both jurisdictionally and on the merits, because Montana's HIPAA provision is identical to and expressly relies on federal law. Fossen v. Blue Cross & Blue Shield of Mont., 660 F3d 1102 (9th Cir. 2011).

33-22-530. Notice required for cancellation for nonpayment of group health insurance.

Compiler's Comments

2009 Amendment: Chapter 271 in (3) in first sentence after "claims" substituted "for covered benefits incurred" for "received". Amendment effective July 1, 2009.

Effective Date — Applicability: Section 11, Ch. 384, L. 2003, provided: "[This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004."

Part 6

Blanket Disability Insurance

33-22-601. Blanket disability insurance defined.

Case Notes

Car Rental Policy as Individual Disability Policy: A car rental agreement that provided a renter with coverage for accidental death arising from operation during the rental period contained a provision excluding coverage if the renter suffered a loss caused directly or indirectly by intoxicants. Because the policy was characterized as an individual rather than group disability insurance policy, the "intoxicants exclusion" was rendered ineffective because the language was not approved by the Insurance Commissioner as required by 33-22-221. Rodli v. Am. Bankers Ins. Co. of Fla., 44 St. Rep. 1888 (D.C. Mont. 1987) (apparently not reported in Federal Supplement).

33-22-602. Required provisions of blanket policies.

Compiler's Comments

2009 Amendment: Chapter 271 in (5) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2009.

33-22-604. Payment of claims — discharge.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 7

Montana Mental Health Parity Act

Part Compiler's Comments

Incorporation Into the Montana Insurance Code: Sections 33-22-701 through 33-22-704 (33-22-704 now repealed) were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of the Montana Insurance Code, Title 33, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in Title 33.

33-22-701. Short title — purpose — scope of part — exceptions.

Compiler's Comments

2017 Amendment: Chapter 245 substituted current text for former section that read: "Except as provided in 33-22-706, the provisions of this part apply to all group policies and certificates of accident and health insurance and group subscriber contracts for the care and treatment of mental illness, alcoholism, and drug addiction offered to Montana residents by insurers, health service corporations, and all employees' health and welfare funds that provide accident and health insurance benefits to residents of this state. It is the purpose of this part to preserve the rights of the consumer to have this coverage according to the consumer's medical and economic needs." Amendment effective January 1, 2018.

2001 Amendment: Chapter 227 near beginning of first sentence after "group policies" inserted "and certificates". Amendment effective October 1, 2001.

1999 Amendment: Chapter 348 at beginning inserted exception clause; and made minor changes in style. Amendment effective January 1, 2000.

Severability: Section 7, Ch. 348, L. 1999, was a severability clause.

Saving Clause: Section 8, Ch. 348, L. 1999, was a saving clause.

Effective Date — Applicability: Section 9, Ch. 348, L. 1999, provided: "[This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date."

1987 Amendment: In first sentence changed "offered in Montana" to "offered to Montana residents", inserted "and all employees' health and welfare funds that provide accident and health insurance benefits to residents of this state", and made minor changes in style.

1983 Amendment: Substituted existing language (see 1983 Session Law) for former text, which read: "The purpose of this part is to encourage consumers to avail themselves of basic levels of benefits under health insurance policies and contracts for the care and treatment of mental illness, alcoholism, and drug addiction and to preserve the rights of the consumer to select such coverage according to his medical and economic needs."

1981 Amendment: Inserted "mental illness" after "treatment of" in the middle of the section.

33-22-702. Definitions.

Compiler's Comments

Contingent Effective Date: Section 5, Ch. 323, L. 2021, provided: "[This act] is effective on the date that the commissioner of securities and insurance certifies to the code commissioner that regulations or guidance implementing the mental health and substance use disorder parity analysis requirements of Title II of Division BB of the federal Consolidated Appropriations Act, 2021 (P.L.116-260) is finalized. The commissioner of securities and insurance shall submit certification within 30 days of the occurrence of the contingency." On April 27, 2022, the commissioner of securities and insurance certified to the code commissioner that the contingency had occurred.

2021 Amendments — Composite Section: Chapter 277 inserted definitions of primary care behavioral health model and psychiatric collaborative care model; and made minor changes in style. Amendment effective January 1, 2022.

Chapter 323 inserted definitions of mental health benefits and substance use disorder benefits; and made minor changes in style. Amendment effective on occurrence of contingency.

Applicability: Section 6, Ch. 323, L. 2021, provided: "[This act] applies to insurance policies issued, modified, and renewed on or after [the effective date of this act]." Effective on occurrence of contingency.

2017 Amendment: Chapter 245 deleted definition that read: ""Chemical dependency treatment center" means a treatment facility that:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or addiction counselor licensed by the state; and

(b) is licensed or approved as a treatment center by the department of public health and human services under 53-24-208 or is licensed or approved by the state where the facility is located"; in definition of mental health treatment center near middle after "and treatment for mental illness" inserted "or severe mental illness", and near end substituted "a qualified health care provider" for "an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist"; in definition of mental illness deleted former (c)(vi) that read: "(vi) a severe mental illness as provided in 33-22-706"; inserted definitions of qualified health care provider, severe mental illness, substance use disorder, and substance use disorder treatment center; and made minor changes in style. Amendment effective January 1, 2018.

2001 Amendments — Composite Section: Chapter 23 in definition of chemical dependency treatment center in (a) substituted "addiction counselor licensed" for "chemical dependency counselor certified". Amendment effective January 1, 2002.

Chapter 227 in definition of chemical dependency treatment center at end of (b) inserted "or is licensed or approved by the state where the facility is located"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 348 inserted (4)(c)(vi) regarding severe mental illness; and made minor changes in style. Amendment effective January 1, 2000.

Severability: Section 7, Ch. 348, L. 1999, was a severability clause.

Saving Clause: Section 8, Ch. 348, L. 1999, was a saving clause.

Effective Date — Applicability: Section 9, Ch. 348, L. 1999, provided: "[This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date."

1995 Amendments: Chapter 448 in definition of mental health treatment center, in introductory clause near end before "facility", inserted "treatment"; substituted definition of mental illness for former definition that read: ""Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder"; and made minor changes in style.

Chapter 546 in (1)(b) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Applicability: Section 3, Ch. 448, L. 1995, provided: "[This act] applies to a policy or certificate of disability insurance and health service membership contract entered into or renewed on or after [the effective date of this act]." Effective October 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1987 Amendments: Chapter 98 substituted definitions of inpatient benefits, outpatient benefits, and chemical dependency treatment center for former (1) through (3) that read: "(1) "Inpatient hospital benefits" means benefits payable for charges made by a hospital or freestanding inpatient facility, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as a hospital inpatient.

(2) "Outpatient benefits" means benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(c) reasonable charges made by a mental health, alcoholism, or drug addiction treatment center for the necessary care and treatment of a covered person provided in the treatment center; and

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, or social worker.

(3) "Alcoholism treatment center" and "drug addiction treatment center" mean a treatment facility which provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state, and which facility is also:

(a) affiliated with a hospital under a contractual agreement with an established system for patient referral; or

(b) licensed or approved as an alcoholism or drug addiction treatment center by the alcohol authority of the state."

Chapter 606 in (2)(d) inserted "licensed professional counselor" and before "social worker" inserted "licensed". This language was codified in 33-22-705 pursuant to sec. 12, Ch. 606, L. 1987.

1985 Amendment: At end of (2)(d) added "or social worker".

1983 Amendment: Near beginning of (1), after "hospital" inserted "or freestanding inpatient facility"; near middle of (1), after "confined as" deleted "a hospital" and inserted "an"; inserted (2)(d) referring to services rendered by a licensed psychiatrist or psychologist; in (3) after "physician" inserted "or chemical dependency counselor certified by the state"; in (3)(b) after "licensed" deleted "certified", and before "state" inserted "alcohol authority of the".

1981 Amendment: Inserted "mental illness" after "treatment of" in (1) (two places) and (2)(a) and after "treatment for" in (2)(b); substituted "a mental health, alcoholism, or drug addiction treatment center" for "an alcoholism or drug addiction treatment center" in (2)(c); and added definitions of "mental health treatment center" and "mental illness".

33-22-703. Coverage for mental illness, severe mental illness, and substance use disorders — definition.

Compiler's Comments

2017 Amendment: Chapter 245 substituted current text for former section that read: "A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the association for ambulatory behavioral healthcare if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000; and

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(c);

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the association for ambulatory behavioral healthcare if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (2)(c); and

(e) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, but this subsection (2)(e) does not apply to benefits for services furnished before September 30, 2001." Amendment effective January 1, 2018.

2015 Amendment: Chapter 55 in (1)(b) and (2)(b) substituted "association for ambulatory behavioral healthcare" for "American association for partial hospitalization". Amendment effective October 1, 2015.

2001 Amendment: Chapter 227 in version effective October 1, 2001, in (2)(a) after "mental illness" deleted "alcoholism, and drug addiction". Amendment effective October 1, 2001.

1999 Amendment: (Temporary version) Chapter 477 in (1)(a) after "hospital benefits" inserted "and outpatient benefits"; in (1)(a)(i) after "illness" deleted "alcoholism, and drug addiction"; in (1)(a)(iii) at beginning after "inpatient" inserted "and outpatient", after "addiction" inserted "excluding costs for medical detoxification", and after "benefit of" substituted "$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000" for "$4,000 in any 24-month period and a maximum lifetime benefit of $8,000"; inserted (1)(a)(iv) regarding costs for medical detoxification treatment; in (1)(b)(i) after "illness" deleted "alcoholism, and drug addiction"; in (1)(b)(iii) at beginning after "inpatient" inserted "and outpatient", after "addiction" inserted "excluding costs for medical detoxification", and after "benefit of" substituted "$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000" for "$4,000 in any 24-month period and a maximum lifetime benefit of $8,000"; inserted (1)(b)(iv) regarding costs for medical detoxification treatment; deleted former (1)(b)(v) that read: "(v) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000"; and made minor changes in style. Amendment effective January 1, 2000.

(Version effective October 1, 2001) In (1) after "hospital benefits" inserted "and outpatient benefits"; in (1)(a) after "illness" deleted "alcoholism, and drug addiction"; in (1)(c) at beginning after "inpatient" inserted "and outpatient", after "addiction" inserted "excluding costs for medical detoxification", and after "benefit of" substituted "$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000" for "$4,000 in any 24-month period and a maximum lifetime benefit of $8,000"; inserted (1)(d) regarding costs for medical detoxification treatment; in (2)(c) at beginning after "inpatient" inserted "and outpatient", after "addiction" inserted "excluding costs for medical detoxification", and after "benefit of" substituted "$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000" for "$4,000 in any 24-month period and a maximum lifetime benefit of $8,000"; inserted (2)(d) regarding costs for medical detoxification treatment; deleted former (2)(e) that read: "(e) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000"; and made minor changes in style.

Effective Date — Applicability: Section 3, Ch. 477, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to all policies or certificates issued or renewed on or after that date."

1997 Amendments: Chapter 42 near end of introduction, before "level of benefits described in subsection (1)(c)", deleted "minimum" (voided by Ch. 416 amendment). Amendment effective March 12, 1997.

Chapter 416 in (1), at beginning, substituted "A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following" for "Insurers, health service corporations, or any employees' health and welfare fund that provides accident and health insurance benefits to residents of this state under group health insurance or group health plans shall provide, for Montana residents covered under hospital and medical expenses incurred insurance group policies and under hospital and medical service plan group contracts, the" and at end, after "and drug addiction", deleted "subject to the right of the applicant to select any alternative level of benefits above the minimum level of benefits described in subsections (1)(c), (2)(a), (2)(c), (2)(d), and (2)(e) as may be offered by the insurer or health service corporation"; in (1)(b)(iv), at end, inserted "but this subsection (1)(b)(iv) does not apply to benefits for services furnished before September 30, 2001, unless the group health plan or group health insurance coverage is exempt from the requirements of subsection (2) pursuant to subsection (3) or (4)"; inserted (2) prohibiting imposition of aggregate dollar limit and requiring adoption of rules for determining weighted average aggregate lifetime limit; inserted (3) making subsection (2) inapplicable to group health plan or insurance offered in connection with group health plan; inserted (4) making subsection (2) inapplicable if application of subsection (2) results in increase in costs and making subsection (4) applicable to each benefit package option; and made minor changes in style. Amendment effective January 1, 1998, and terminates September 30, 2001.

Termination: Section 54, Ch. 416, L. 1997, provided: "[Section 9(2) through (4) [33-22-703(2) through (4)] terminates September 30, 2001."

1995 Amendment: Chapter 448 substituted (1)(a) through (1)(c) concerning inpatient treatment for mental illness, alcoholism, and drug addiction for former (1)(a) and (1)(b) that read: "(a) benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract;

(b) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) $4,000 in any 24-month period; and

(ii) $8,000 in lifetime benefits"; substituted (2)(a) through (2)(c) concerning inpatient treatment and (2)(d) and (2)(e) concerning outpatient treatment for former (2)(a) through (2)(d) that read: "(a) inpatient benefits may be limited to no less than 30 calendar days per year as defined in the policy or contract. If inpatient benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

(b) for outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for mental illness, alcoholism, and drug addiction in the aggregate during any applicable benefit period may be limited to not less than $1,000;

(c) maximum lifetime benefits shall, for mental illness in the aggregate, be no less than those applicable to physical illness generally;

(d) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) $4,000 in any 24-month period; and

(ii) $8,000 in lifetime benefits"; adjusted subsection references; and made minor changes in style.

Applicability: Section 3, Ch. 448, L. 1995, provided: "[This act] applies to a policy or certificate of disability insurance and health service membership contract entered into or renewed on or after [the effective date of this act]." Effective October 1, 1995.

1987 Amendments: Chapter 139 at end of introduction, after "insurer or", substituted "health service corporation" for "service plan corporation".

Chapter 384 near beginning of introductory clause, after "health service corporations", deleted "transacting" and inserted "or any employees' health and welfare fund that provides accident and health insurance benefits to residents of this state under", after "group health plans" deleted "in this state", and after "shall provide" inserted "for Montana residents covered".

1983 Amendment: In introductory clause after "transacting" inserted "group"; after "health insurance" inserted "or group health plans"; after "state" substituted "shall provide" for "must make available"; inserted "group" before "policies" and "contracts"; after "applicant" deleted "for a group or individual policy or contract to reject the coverage or"; after "benefits" inserted "above the minimum level of benefits described in subsections (1)(b), (2)(a), (2)(b), and (2)(d)"; in (1) after "basic" substituted "inpatient" for "hospital"; inserted (1)(b) establishing minimum aggregate maximum benefits; once in (2) and twice in (2)(a) deleted "hospital" before "benefits"; in (2)(a) after "limited to" inserted "no less than"; in (2)(c) substituted existing language concerning maximum lifetime benefits for "maximum lifetime benefits may, for mental illness, alcoholism, and drug addiction in the aggregate, be no less than an amount equal to the lesser of $10,000 or 25% of the lifetime policy limit."; and inserted (2)(d) establishing minimum aggregate maximum benefits.

1981 Amendment: Added treatment and care of mental illness to available coverages by inserting "mental illness," before "alcoholism, and drug addiction" in three places.

33-22-705. Inpatient and outpatient benefits — use of psychiatric collaborative care or primary care behavioral health model.

Compiler's Comments

2021 Amendment: Chapter 277 inserted (2)(e) providing for reasonable charges for outpatient benefits and specifying common procedural terminology billing codes; and made minor changes in style. Amendment effective January 1, 2022.

2017 Amendment: Chapter 245 in (1)(a)(i) substituted "severe mental illness, or substance use disorder" for "alcoholism, or drug addiction" and after "while confined as an inpatient" substituted "or" for "and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by"; in (1)(a)(ii) substituted "qualified health care provider" for "physician" and substituted "severe mental illness, or substance use disorder" for "alcoholism, or drug addiction"; in (1)(b) after "Care and treatment of" substituted "a substance use disorder" for "alcoholism or drug addiction", after "facility must be in a" substituted "substance use disorder" for "chemical dependency", and after "treatment center" deleted "that is approved by the department of public health and human services under 53-24-208"; in (2)(a) substituted "severe mental illness, or substance use disorder" for "alcoholism, or drug addiction"; in (2)(b) near beginning substituted "qualified health care provider" for "physician" and near middle substituted "severe mental illness, or substance use disorder" for "alcoholism, or drug addiction"; in (2)(c) near beginning substituted "substance use disorder" for "chemical dependency" and at end substituted "while not confined as an inpatient" for "The chemical dependency treatment center must be approved by the department of public health and human services under 53-24-208"; in (2)(d) substituted "qualified health care provider, hospital, mental health treatment center, or substance use disorder treatment center in an acute or subacute partial hospitalization or intensive outpatient treatment setting" for "licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or addiction counselor licensed by the department of labor and industry under Title 37, chapter 35"; and made minor changes in style. Amendment effective January 1, 2018.

2001 Amendments — Composite Section: Chapter 23 in definition of outpatient benefits in (d) substituted "addiction counselor licensed" for "chemical dependency counselor certified". Amendment effective January 1, 2002.

Chapter 483 in (2)(d) near end after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1999 Amendment: Chapter 477 in (1) inserted third sentence providing that inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 3, Ch. 477, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to all policies or certificates issued or renewed on or after that date."

1997 Amendment: Chapter 507 in (2)(d), at end, substituted "department of commerce under Title 37, chapter 35" for "department of public health and human services under 53-24-204". Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 in (1), (2)(c), and (2)(d) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Coordination Instruction: Section 12, Ch. 606, L. 1987, directed the Code Commissioner to insert in (2)(d), after "psychologist", the words "licensed professional counselor, licensed".

33-22-707. Parity compliance records.

Compiler's Comments

Contingent Effective Date: Section 5, Ch. 323, L. 2021, provided: "[This act] is effective on the date that the commissioner of securities and insurance certifies to the code commissioner that regulations or guidance implementing the mental health and substance use disorder parity analysis requirements of Title II of Division BB of the federal Consolidated Appropriations Act, 2021 (P.L.116-260) is finalized. The commissioner of securities and insurance shall submit certification within 30 days of the occurrence of the contingency." On April 27, 2022, the commissioner of securities and insurance certified to the code commissioner that the contingency had occurred.

Applicability: Section 6, Ch. 323, L. 2021, provided: "[This act] applies to insurance policies issued, modified, and renewed on or after [the effective date of this act]." Effective on occurrence of contingency.

33-22-710. Rulemaking.

Compiler's Comments

Effective Date: Section 11, Ch. 245, L. 2017, provided: "[This act] is effective January 1, 2018."

Part 9
Medicare Supplement Insurance Minimum Standards

Part Compiler's Comments

Statement of Intent: The statement of intent attached to SB 241 (Ch. 298, L. 1981) provided: "This bill is adopted to enable the State of Montana to meet the requirements of Public Law 96-265, the Social Security Disability Amendments of 1980 (the Baucus Amendment). Public Law 96-265 establishes a program of federal certification of medicare supplemental insurance policies and provides that medicare supplemental policies issued in a state with an approved regulatory program shall be certified under the federal certification program. [In order to be approved, a state's medicare supplemental insurance policy regulatory program must provide for the application of standards with respect to such policies equal to or more stringent than the NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act, adopted by the National Association of Insurance Commissioners on June 6, 1979; include a requirement at least as stringent as the federal provision requiring that such policies return to policyholders in the form of aggregate benefits under the policy, at least 75% of the aggregate amount of premiums collected in the case of group policies and at least 60% of the aggregate amount of premiums collected in the case of individual policies; and apply these standards and requirements to all medicare supplemental policies issued in the state.]

A statement of intent is required for this bill because it delegates rulemaking authority to the Commissioner of Insurance. This bill is intended to give the Commissioner of Insurance the authority to adopt rules establishing minimum standards for benefits, contents, and sale of medicare supplemental insurance policies in the State of Montana to insure the implementation of a regulatory program which meets the minimum standards of Public Law 96-265, the Social Security Disability Amendments of 1980.

It is contemplated that such rules should address the following:

(a) prohibited policy provisions including the kinds of coverage that may be excluded from coverage in a medicare supplemental policy;

(b) minimum standards for medicare supplement policy provisions and minimum benefit standards;

(c) required disclosure provisions such as provisions regarding renewal, continuation, and nonrenewal, definition and explanation of terms, preexisting condition limitations, "free-look" provisions and forms for a buyer's guide and an outline of policy coverage; and

(d) replacement requirements, including a form for notice to an applicant regarding replacement of disability insurance.

First adopted by the Public Health Committee on the 9th day of February, 1981.

It is the intent of the Legislature in enacting Senate Bill 241 to enable the Insurance Commissioner to implement a program for control of Medicare supplemental policies which will enable Montana to be exempted from the voluntary certification program for such policies established by Public Law 96-265. It is also the intent of the Legislature that policies supplementing Medicare be available to as broad a segment of senior citizens as possible. To that end, Senate Bill 241 should not be construed so as to prohibit the sale of Medicare supplemental policies with benefit levels less than those established by Public Law 96-265, if the Insurance Commissioner finds that such sales would not prevent Montana from obtaining the aforementioned exemption."

Severability: Section 11, Ch. 298, L. 1981, was a severability section.

Part Administrative Rules

Title 6, chapter 6, subchapter 5, ARM Medicare supplements.

Title 6, chapter 6, subchapter 6, ARM Medicare select policies.

33-22-902. Purpose.

Compiler's Comments

1993 Amendment: Chapter 163 near middle, after "supplement", deleted "insurance", after "policies" inserted "and certificates", and at end substituted "42 U.S.C. 1395ss(p)(1)(A)" for "Public Law 96-265, the Social Security Disability Amendments of 1980, approved June 9, 1980". Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

Administrative Rules

ARM 6.6.503 Applicability and scope.

ARM 6.6.601 Application and scope.

33-22-903. Definitions.

Compiler's Comments

1997 Amendment: Chapter 531 in definition of Medicare supplement policy, near middle, substituted "42 U.S.C. 1395ss(g)(1)" for "42 U.S.C. 1395l or 1395mm".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1993 Amendment: Chapter 163 in definition of applicant, in two places, and in definition of certificate, after "policy", deleted "or subscriber contract"; inserted definitions of certificate form, issuer, and policy form; in definition of Medicare supplement policy, near middle of first sentence after "corporation", inserted "other than a policy issued pursuant to a contract under 42 U.S.C. 13951 or 1395mm, or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act", at end of sentence deleted "by reason of age", and deleted former (b) that read: "(b) a policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) has been maintained in good faith for purposes other than obtaining insurance; and

(iii) has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members"; and made minor changes in style. Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

1989 Amendment: In definition of certificate, before "issued", inserted "delivered or", after "issued" inserted "for delivery in this state", and at end substituted "or subscriber contract" for "that has been delivered or issued for delivery in this state"; and inserted definitions of health care expenses and entity.

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

Source: Section 1, Medicare Supplemental Insurance Minimum Standards Model Act, drafted by the National Association of Insurance Commissioners, 1980.

Administrative Rules

ARM 6.6.504 and 6.6.602 Definitions.

33-22-904. Standards for policy provisions — rules.

Compiler's Comments

1993 Amendment: Chapter 163 in (1), after "supplement", deleted "insurance" and after "policy" deleted "contract"; in (2) inserted second sentence precluding applicability to Medicare supplement policies and certificates; in (3), in two places after "policy", inserted "or certificate"; in (4), in two places after "policy", inserted "or certificate" and in first sentence substituted "exclude or limit benefits" for "deny a claim"; inserted (5) granting the Commissioner rulemaking authority to conform policies and certificates to federal law; and made minor changes in style. Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

1989 Amendment: Inserted (1) relating to duplicate benefits; and at end of first sentence of (2) inserted "and certificates".

1989 Statement of Intent: The statement of intent attached to Ch. 682, L. 1989, provided: "A statement of intent is required for this bill because it authorizes the state commissioner of insurance to make and amend reasonable rules relating to specific standards that medicare supplement insurance policies or certificates must meet, minimum standards for benefits and claims payment, minimum standards for loss ratios, and the timing and manner of premium adjustments. The legislature intends that the rules that the commissioner adopts to implement this bill be designed to allow the commissioner to comply with the federal standards established by the Medicare Catastrophic Coverage Act of 1988, P.L. 100-360."

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

1981 Statement of Intent: See part compiler's comments for text of statement of intent attached to SB 241 (Ch. 298, L. 1981).

Source: Section 2, Medicare Supplemental Insurance Minimum Standards Model Act, drafted by the National Association of Insurance Commissioners, 1980.

Administrative Rules

Title 6, chapter 6, subchapter 5, ARM Medicare supplements.
ARM 6.6.505 Policy definitions and terms.
ARM 6.6.506 Prohibited policy provisions.
ARM 6.6.507B Open enrollment.
ARM 6.6.507C Guaranteed issue for eligible persons.

33-22-905. Minimum standards for benefits and payment of claims — rules.

Compiler's Comments

1993 Amendment: Chapter 163 near middle, after "claims", inserted "marketing practices, compensation arrangements, and reporting practices" and at end inserted "and certificates"; and made minor changes in style. Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

1989 Amendment: After "shall" substituted "adopt" for "issue" and after "benefits" inserted "and payment of claims".

1989 Statement of Intent: The statement of intent attached to Ch. 682, L. 1989, provided: "A statement of intent is required for this bill because it authorizes the state commissioner of insurance to make and amend reasonable rules relating to specific standards that medicare supplement insurance policies or certificates must meet, minimum standards for benefits and claims payment, minimum standards for loss ratios, and the timing and manner of premium adjustments. The legislature intends that the rules that the commissioner adopts to implement this bill be designed to allow the commissioner to comply with the federal standards established by the Medicare Catastrophic Coverage Act of 1988, P.L. 100-360."

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

1981 Statement of Intent: See part compiler's comments for text of statement of intent attached to SB 241 (Ch. 298, L. 1981).

Source: Section 3, Medicare Supplemental Insurance Minimum Standards Model Act, drafted by the National Association of Insurance Commissioners, 1980.

Administrative Rules

Title 6, chapter 6, subchapter 5, ARM Medicare supplements.
ARM 6.6.507 Minimum benefit standards.

33-22-906. Loss ratio standards and filing requirements — limits on compensation.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) deleted former third sentence that read: "For purposes of rules adopted pursuant to this section, medicare supplement policies and certificates issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, must be treated as group policies." Amendment effective April 4, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

1993 Amendment: Chapter 163 deleted former (1) that read: "(1) Every entity providing group medicare supplement insurance benefits to a resident of this state shall file a copy of the master policy and each certificate used in this state with the commissioner as required by 33-1-501. The filing must be made not less than 60 days in advance of the delivery of any certificate or policy to a resident of this state"; in (1), in three places after "policies", inserted "and certificates", in first sentence, after "policyholders", inserted "or certificate holders", and at end of third sentence, before "policies", substituted "group" for "individual"; in (1)(a), after "policy or", substituted "certificate" for "contract" and after "policies" inserted "and certificates"; in (1)(b), after "supplement", deleted "insurance" and at end substituted "certificate" for "contract"; in (3), in introductory clause, in (3)(a), in three places, and in (3)(b), after "policy", inserted "or certificate"; and made minor changes in style. Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

1989 Amendments: Chapter 682 inserted (1) requiring filing of a copy of the master policy and each certificate with the Commissioner; near middle of second sentence of (2), after "experience", inserted "or incurred health care expenses, where coverage is provided by a health maintenance organization on a service rather than reimbursement basis"; inserted last clause of (2), (2)(a), and (2)(b), regarding premium adjustments; inserted (3) regarding Commissioner rulemaking and rate adjustment; and inserted (4) relating to compensation of agents and solicitors.

Chapter 713 in (4) substituted "insurance producers" for "agents or solicitors". Amendment effective January 1, 1990.

1989 Statement of Intent: The statement of intent attached to Ch. 682, L. 1989, provided: "A statement of intent is required for this bill because it authorizes the state commissioner of insurance to make and amend reasonable rules relating to specific standards that medicare supplement insurance policies or certificates must meet, minimum standards for benefits and claims payment, minimum standards for loss ratios, and the timing and manner of premium adjustments. The legislature intends that the rules that the commissioner adopts to implement this bill be designed to allow the commissioner to comply with the federal standards established by the Medicare Catastrophic Coverage Act of 1988, P.L. 100-360."

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

Source: Section 4, Medicare Supplemental Insurance Minimum Standards Model Act, drafted by the National Association of Insurance Commissioners, 1980.

Administrative Rules

ARM 6.6.508 Loss ratio standards.

33-22-907. Disclosure standards — informational brochure — rules.

Compiler's Comments

1997 Amendment: Chapter 531 deleted (4)(c) through (4)(e) that read: "(c) basic, catastrophic, or major medical expense policies;

(d) single premium, nonrenewable policies; or

(e) other policies excepted in 33-22-903(8)"; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1993 Amendment: Chapter 163 in (1), in first sentence after "policies", inserted "and certificates"; in (2)(c)(i) and (2)(c)(ii), after "policy", inserted "or certificate"; in (2)(c)(iii), near middle, substituted "issuer" for "insurer" and after "change premiums" inserted "and disclosure of the existence of any automatic renewal premium increases based on the policyholder's or certificate holder's age"; in (2)(c)(iv), in two places after "policy", inserted "or certificate"; in (3), in two places, and in (4), in introductory clause after "medicare", deleted "by reason of age"; in (4)(a), after "policies", inserted "or certificates"; in (4)(e) substituted "33-22-903(8)" for "33-22-903(6)"; in (5), near end after "policies", deleted "subscriber contracts" and after "medicare" deleted "by reason of age"; in (6), near middle after "policyholders", deleted "contract holders", near end, after "supplement", deleted "insurance", and at end substituted "certificate" for "contract". Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

1989 Amendment: Inserted last two sentences of (1) requiring filing of the outline of coverage; in (4)(e) substituted "excepted" for "defined" and corrected internal reference; and inserted (6) relating to notification to policyholders of policy changes.

1989 Statement of Intent: The statement of intent attached to Ch. 682, L. 1989, provided: "A statement of intent is required for this bill because it authorizes the state commissioner of insurance to make and amend reasonable rules relating to specific standards that medicare supplement insurance policies or certificates must meet, minimum standards for benefits and claims payment, minimum standards for loss ratios, and the timing and manner of premium adjustments. The legislature intends that the rules that the commissioner adopts to implement this bill be designed to allow the commissioner to comply with the federal standards established by the Medicare Catastrophic Coverage Act of 1988, P.L. 100-360."

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

Source: Section 5, Medicare Supplemental Insurance Minimum Standards Model Act, drafted by the National Association of Insurance Commissioners, 1980.

Administrative Rules

ARM 6.6.502A Purpose.
ARM 6.6.509 Required disclosure provisions.
ARM 6.6.510 Requirements for application forms and replacement coverage.
ARM 6.6.523 Separability.
ARM 6.6.608 Disclosure requirements.

33-22-908. Notice of free examination.

Compiler's Comments

1993 Amendment: Chapter 163 at beginning of second sentence substituted "issuer" for "insurer"; and made minor changes in style. Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

1989 Amendment: Near beginning, after "certificates", deleted "other than those issued pursuant to direct response solicitation", before "or attached thereto" inserted "or certificate", near middle increased from 10 days to 30 days the time allowed for return and refund of a policy or certificate, and inserted last sentence relating to timely refund payment; and deleted former (2) that read: "(2) Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare by reason of age must have a notice prominently printed on the first page or attached thereto stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason."

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

Source: Section 6, Medicare Supplemental Insurance Minimum Standards Model Act, drafted by the National Association of Insurance Commissioners, 1980.

33-22-909. Administrative procedures.

Compiler's Comments

Statement of Intent: See part compiler's comments for text of statement of intent attached to SB 241 (Ch. 298, L. 1981).

Source: Section 7, Medicare Supplemental Insurance Minimum Standards Model Act, drafted by the National Association of Insurance Commissioners, 1980.

33-22-910. Filing requirements for advertising.

Compiler's Comments

1997 Amendment: Chapter 531 near middle, after "commissioner's", deleted "review or".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1993 Amendment: Chapter 163 at beginning substituted "issuer of" for "entity providing", near middle, after "supplement", substituted "policies or certificates" for "insurance or benefits", and after "review" inserted "or approval"; and made minor changes in style. Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

1989 Statement of Intent: The statement of intent attached to Ch. 682, L. 1989, provided: "A statement of intent is required for this bill because it authorizes the state commissioner of insurance to make and amend reasonable rules relating to specific standards that medicare supplement insurance policies or certificates must meet, minimum standards for benefits and claims payment, minimum standards for loss ratios, and the timing and manner of premium adjustments. The legislature intends that the rules that the commissioner adopts to implement this bill be designed to allow the commissioner to comply with the federal standards established by the Medicare Catastrophic Coverage Act of 1988, P.L. 100-360."

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment [enactment] of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

33-22-911. Penalties.

Compiler's Comments

1993 Amendment: Chapter 163 near beginning, after "require", substituted "issuers" for "entities"; and made minor changes in style. Amendment effective March 24, 1993.

Severability: Section 10, Ch. 163, L. 1993, was a severability clause.

1989 Statement of Intent: The statement of intent attached to Ch. 682, L. 1989, provided: "A statement of intent is required for this bill because it authorizes the state commissioner of insurance to make and amend reasonable rules relating to specific standards that medicare supplement insurance policies or certificates must meet, minimum standards for benefits and claims payment, minimum standards for loss ratios, and the timing and manner of premium adjustments. The legislature intends that the rules that the commissioner adopts to implement this bill be designed to allow the commissioner to comply with the federal standards established by the Medicare Catastrophic Coverage Act of 1988, P.L. 100-360."

Saving Clause: Section 13, Ch. 682, L. 1989, was a saving clause.

Severability: Section 14, Ch. 682, L. 1989, was a severability clause.

Applicability: Section 15, Ch. 682, L. 1989, provided: "Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989."

Source — Model Act: The 1989 amendment [enactment] of this section was based on the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

33-22-921. Discontinuance or nonrenewal — alternate policy or certificate — same insurer.

Compiler's Comments

1991 Amendment: Throughout section, after "policy" and "policy product", inserted "or certificate".

33-22-923. Replacement policy or certificate — different insurer.

Compiler's Comments

1991 Amendment: Throughout section, after "policy", inserted "or certificate".

33-22-924. Renewal requirement.

Compiler's Comments

1991 Amendment: Throughout section, after "policy" or "policies", inserted "or certificate" or "or certificates"; and in last sentence in (2) substituted "discontinued" for "replaced".

Part 10

Home Health Care Coverage

33-22-1001. Definition of home health care.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

33-22-1002. Availability of coverage for home health care.

Compiler's Comments

2001 Amendment: Chapter 227 in first sentence after "group insurance policies" inserted "or certificates" and in second sentence after "group policy" inserted "certificate"; and made minor changes in style. Amendment effective October 1, 2001.

33-22-1003. Applicability.

Compiler's Comments

2001 Amendment: Chapter 227 near beginning of first sentence after "policies" inserted "certificates"; and made minor changes in style. Amendment effective October 1, 2001.

Part 11

Long-Term Care Insurance Act

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 355, L. 1989, provided: "A statement of intent is required for this bill because section 14 [33-22-1121(1)] authorizes the commissioner of insurance of the state of Montana to promulgate rules relating to the disclosure of policy provisions, coverage, marketability, and prohibited practices in the solicitation of long-term care insurance. The legislature intends that the rules which the commissioner adopts to implement this bill be designed principally to protect the insurance-buying public in Montana by requiring insurers who offer long-term care insurance to accurately describe coverages provided by the insurance product and to prohibit certain practices regarding coverage, renewal, and eligibility. The legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority and which permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any laws of this state or with any reasonable implication of those laws; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703 [now repealed]."

Severability: Section 17, Ch. 355, L. 1989, was a severability clause.

Applicability: Section 18, Ch. 355, L. 1989, provided: "[This act] [codified as Title 33, ch. 22, part 11] applies to policies delivered or issued for delivery in this state on or after October 1, 1989. [This act] [Title 33, ch. 22, part 11] is not intended to supersede the obligations of entities subject to [this act] [Title 33, ch. 22, part 11] to comply with the substance of other applicable insurance laws insofar as they do not conflict with [this act] [Title 33, ch. 22, part 11], except that laws and regulations designed and intended to apply to medicare supplement insurance policies may not be applied to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance or nursing home insurance need not meet the requirements of [this act] [Title 33, ch. 22, part 11]. A policy that contains long-term care insurance benefits of a duration of at least 6 months must meet the requirements of [this act] [Title 33, ch. 22, part 11] if the premium allocable to the long-term care benefits is greater than 25% of the total policy premium."

Part Administrative Rules

Title 6, chapter 6, subchapter 31, ARM Long-term care.

ARM 6.6.3117 through 6.6.3120 Standards for marketing and appropriate sale criteria and nonforfeiture requirements.

ARM 6.6.3121 Required disclosure of rating practices to consumers.

ARM 6.6.3122 Initial filing requirements.
ARM 6.6.3124 Premium rate schedule increases.
ARM 6.6.3126 Prohibition against preexisting conditions and probationary periods in replacement policies.
ARM 6.6.3128 Availability of new services or providers.
ARM 6.6.3129 Right to reduce coverage and lower premiums.

33-22-1104. Scope.

Compiler's Comments

Effective Date: Section 18, Ch. 32, L. 2007, provided: "[This act] is effective July 1, 2007."

33-22-1107. Definitions.

Compiler's Comments

2007 Amendment: Chapter 32 in definition of group long-term care insurance in (a)(i) substituted "one or more employers" for "an employer", in (a)(iv) after "established by" substituted "one or more employers or labor organizations" for "an employer or labor organization", and in (c)(ii) near middle after "finds" deleted "after hearing"; in definition of long-term care insurance in (a)(i) at beginning after "means" substituted "any insurance policy" for "a policy or certificate", near middle after "basis, for" substituted "one or more" for "a", and near end after "personal-care" substituted "services" for "service", in (a)(ii) near beginning after "society" inserted "nonprofit", in (a)(iii) after "policies" deleted "or riders", in (a)(v) after "policy" deleted "or rider", and in (b)(i) near middle after "disability income" inserted "or related asset"; in definition of policy near beginning after "policy" inserted "certificate" and after "membership contract" inserted "subscriber agreement"; in definition of qualified long-term care insurance contract in introductory clause inserted "or "federally tax-qualified long-term care insurance contract"", in (a)(i) at end inserted "as defined in 33-22-1126. A contract may also satisfy the requirements of this subsection (9)(a) if payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate", in (a)(ii) inserted second and third sentences regarding payment and reimbursement of expenses, in (a)(iii) after "renewable" inserted "within the meaning of section 7702B(b)(1)(C) of the Internal Revenue Code, 26 U.S.C. 7702B(b)(1)(C)", and in (b) near middle and at end after "7702B" inserted "(b) and (e)"; deleted former definition of qualified long-term care services that read: ""Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services and maintenance for personal-care services for which an insured is eligible under a qualified long-term care insurance contract and that are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(b) For the purposes of this subsection (10), "licensed health care practitioner" means any of the following individuals when licensed in this state:

(i) a physician, as defined in 42 U.S.C. 1395x(r)(1);
(ii) a registered professional nurse;
(iii) a licensed social worker; or
(iv) another individual as determined by rules of the commissioner adopted for purposes of compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191"; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 416 inserted definitions of activities of daily living, qualified long-term care insurance contract, qualified long-term care services, and transferring; in definition of applicant, in (a) near end, substituted "benefits" for "insurance"; in definition of certificate substituted "a certificate issued under a group long-term care insurance policy" for "a document issued to a member of the group covered under a group insurance policy" and at end, after "in this state", deleted "as evidence that the individual named in the certificate is covered under the policy"; in definition of long-term care insurance, in (a)(i) near beginning, substituted "or certificate" for "as defined in subsection (6)", in (a)(ii), at beginning, substituted "may be" for "includes group and individual insurance policies or riders, whether" and at end inserted "to the extent that it is otherwise authorized to issue life or health insurance", inserted (a)(v) concerning policy or rider providing benefits based on impairment or loss of capacity, and inserted (a)(vi) concerning qualified long-term care insurance contracts; in definition of policy substituted "contract, membership contract, health care services agreement, rider, or endorsement" for "as defined in 33-15-102, a membership contract as defined in 33-30-101, a health care services agreement as defined in 33-31-102"; and made minor changes in style.

1995 Amendment: Chapter 240 inserted definition of appropriate sale criteria; adjusted subsection references; and made minor changes in style.

1991 Amendment: In definition of long-term care insurance inserted (4)(a)(iii) to include annuities and policies that provide directly or supplement long-term care insurance, (4)(a)(iv) to include products offered as long-term care insurance, and (4)(c) to exclude policies that accelerate the death benefit for certain events.

Administrative Rules

ARM 6.6.3102 Definitions.
ARM 6.6.3103 Policy definitions.

33-22-1108. Preexisting condition — definition.

Compiler's Comments

1997 Amendments: Chapter 42 in (1) substituted "described in 33-22-1107(4)(a)" for "defined in 33-22-1107(3)(a)" (voided by Ch. 416 amendment); and made minor changes in style. Amendment effective March 12, 1997.

Chapter 416 in (1) substituted "as specified in 33-22-1107(5)(a)(ii), (5)(a)(iii), or (5)(a)(iv)" for "as defined in 33-22-1107(3)(a)"; inserted (3) requiring insurer to waive time periods applicable to preexisting conditions; and made minor changes in style.

33-22-1111. Outline of coverage.

Compiler's Comments

2007 Amendment: Chapter 32 inserted (2)(g) requiring a statement whether the policy is intended to be a federally tax-qualified long-term care insurance contract; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 416 in (1)(a) inserted "as approved by the commissioner"; inserted (3) concerning outline of coverage; and made minor changes in style.

1989 Amendment: In two places in (1)(b) substituted "insurance producer" for "agent". Amendment effective January 1, 1990.

33-22-1113. Disclosure and performance standards for long-term care insurance.

Compiler's Comments

1997 Amendment: Chapter 416 inserted (1)(p) through (1)(x) concerning subjects to be included in disclosures; and made minor changes in style.

33-22-1114. Prohibited practices and policy provisions.

Compiler's Comments

1997 Amendment: Chapter 416 in (2)(a) substituted "other than the insured's or certificate holder's failure to pay the premium" for "of the age or the deterioration of the mental or physical health of an insured or a certificate holder"; and made minor changes in style.

1995 Amendment: Chapter 240 inserted (1) concerning refunds; and made minor changes in style.

Administrative Rules

ARM 6.6.3104 Policy practices and provisions.
ARM 6.6.3104A Unintentional lapse.
ARM 6.6.3117 Standards for marketing.

33-22-1115. Prior hospitalization or institutionalization.

Compiler's Comments

2007 Amendment: Chapter 32 in (4) at end after "30 days" deleted "for which benefits are paid"; in (5) in two places substituted "benefits" for "benefit"; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 416 inserted (1)(c) concerning requirement for prior institutionalization; and made minor changes in style.

Delayed Effective Date: Section 19, Ch. 355, L. 1989, provided: "[Section 8 [33-22-1115] and this section] are effective one year after passage and approval." Approved March 28, 1989; effective March 28, 1990.

33-22-1116. Nonforfeiture benefits — offer requirement.

Compiler's Comments

2007 Amendment: Chapter 32 in (1) at beginning substituted exception clause for "An insurance company offering" and after "policy" substituted "may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy that includes a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy" for "or certificate shall offer to each prospective purchaser the choice between a policy that includes nonforfeiture benefits to the defaulting or surrendering policyholder or certificate holder and one that does not include nonforfeiture benefits"; inserted (2) requiring a contingent benefit upon lapse if a nonforfeiture benefit is declined; inserted (3) requiring that an offer be made to the group policyholder or to each proposed certificate holder; and made minor changes in style. Amendment effective July 1, 2007.

33-22-1119. Right to return policy — free look — refunds upon denial of application.

Compiler's Comments

2007 Amendment: Chapter 32 throughout section before reference to insured inserted reference to applicant; in (1) at beginning of first sentence substituted "A long-term care insurance applicant and insured" for "A person insured under an individual long-term care insurance policy" and near end of second sentence after "policy" inserted "other than a certificate issued to a group defined in 33-22-1107(5)(a)"; in (2) near middle of first sentence and near beginning of second sentence after "policy" deleted "or certificate"; inserted (3) concerning refund if an application is denied; and made minor changes in style. Amendment effective July 1, 2007.

1995 Amendment: Chapter 240 in two places in (1) extended the right of return from 10 days to 30 days.

33-22-1120. Extraterritorial jurisdiction.

Compiler's Comments

1995 Amendment: Chapter 379 near end of introductory language, after "state", deleted "to a group described in 33-22-1107(3)(d)"; and at end of (1) substituted "and" for "or".

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-22-1121. Rules.

Compiler's Comments

2007 Amendment: Chapter 32 inserted (2) regarding rules to promote premium adequacy and protect the policyholder; inserted (3) regarding rules to establish minimum standards for certain insurance producer activities; inserted (4) regarding rules for penalties and reporting practices; in (5) after "specify" substituted "with respect to nonforfeiture benefits and contingent benefits:

(a) the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies;

(b) the standards for nonforfeiture benefits;

(c) the rules regarding contingent benefits upon lapse, including:

(i) a determination of the specified period of time during which a contingent benefit upon lapse will be available;

(ii) the substantial premium rate increase that triggers a contingent benefit upon lapse as described in 33-22-1116" for "the requirements for offering the sale of a policy with nonforfeiture benefits"; in (7) near middle after "pursuant to" substituted "45 CFR, parts 160 and 164" for "Public Law 104-191"; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 416 inserted (3) and (4) concerning rules requiring mandatory benefit triggers and rules required by Secretary of Health and Human Services pursuant to Public Law 104-191; and made minor changes in style.

1995 Amendment: Chapter 240 at end of introductory clause inserted "including but not limited to rules that"; at beginning of (1) deleted "The commissioner may by rule"; inserted (2) relating to sale of policies with nonforfeiture benefits and to sale criteria; and made minor changes in style.

1995 Statement of Intent: The statement of intent attached to Ch. 240, L. 1995, provided: "A statement of intent is required for this bill because it expands the rulemaking authority of the insurance commissioner to include the promulgation of rules concerning nonforfeiture benefits and appropriate sale criteria in relation to long-term care insurance policies."

Administrative Rules

Title 6, chapter 6, subchapter 31, ARM Long-term care.

ARM 6.6.3117 through 6.6.3120 Standards for marketing and appropriate sale criteria and nonforfeiture requirements.

33-22-1123. Delivery of policy — policy summary — monthly reports.

Compiler's Comments

2007 Amendment: Chapter 32 in (1) near beginning after "policy" deleted "or a certificate meeting the requirements of Public Law 104-191", after "approved, the" deleted "health insurance", after "issuer" deleted "of the policy or certificate", near middle after "policy" deleted "or certificate", after "policyholder" deleted "or certificate holder", and at end substituted "approval" for "issue"; inserted (2) concerning policy summaries and their contents; inserted (3) allowing policy summary provisions to be incorporated into a basic illustration; inserted (4) concerning a monthly report; and made minor changes in style. Amendment effective July 1, 2007.

33-22-1124. Denial of claims.

Compiler's Comments

2007 Amendment: Chapter 32 near beginning of introductory clause after "policy" deleted "or certificate meeting the requirements of Public Law 104-191", before "issuer" deleted "health insurance", and after "60 days after" substituted "the date of" for "the receipt of"; in (2) after "by the" deleted "health insurance"; and made minor changes in style. Amendment effective July 1, 2007.

33-22-1125. Benefit triggers.

Compiler's Comments

2007 Amendment: Chapter 32 in (1) near beginning after "policy" deleted "or certificate" and near middle after "requirements" substituted "of this section and applicable rules" for "as established by rules of the commissioner"; in (2)(a) at beginning after "A" deleted "qualified", after "insurance" substituted "policy" for "contract", and at end after "living" substituted "or on cognitive impairment" for "for an expectation of at least 90 days because of a loss of level of disability described under regulations adopted by the U.S. secretary of the treasury and because of:

(a) a loss of functional capacity requiring the substantial assistance of another person to perform the prescribed activities of daily living; or

(b) a severe cognitive impairment requiring substantial supervision, including verbal cueing, by another person to protect the insured from harming the insured or others for from threats to the insured's health or safety"; deleted former (3) that read: "(3) An insured meets a condition of payment if, within the preceding 12-month period, a licensed health care practitioner has certified that the insured has met the requirements and the practitioner has prescribed the qualified long-term care insurance services pursuant to a plan of care"; in (2)(b) at end after "living" inserted "or requiring the presence of cognitive impairment"; inserted (2)(c) allowing use of activities of daily living to trigger additional covered benefits; inserted (3) allowing the use of certain additional provisions to determine when benefits are payable; inserted (4) determining when a deficiency is restrictive; inserted (5) requiring assessment of activities by licensed professionals; inserted (6) requiring a clear description of the appeal and resolution process; and made minor changes in style. Amendment effective July 1, 2007.

33-22-1126. Additional standards for qualified long-term care contracts — definitions.

Compiler's Comments

Effective Date: Section 18, Ch. 32, L. 2007, provided: "[This act] is effective July 1, 2007."

33-22-1127. Incontestability period.

Compiler's Comments

Effective Date: Section 18, Ch. 32, L. 2007, provided: "[This act] is effective July 1, 2007."

33-22-1128. Insurance producer training requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 27, Ch. 157, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 18, Ch. 32, L. 2007, provided: "[This act] is effective July 1, 2007."

33-22-1129. Penalties.

Compiler's Comments

Effective Date: Section 18, Ch. 32, L. 2007, provided: "[This act] is effective July 1, 2007."

Part 13

Montana Reinsurance Association Act

Part Compiler's Comments

Effective Date: Section 19, Ch. 210, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 30, 2019.

Retroactive Applicability: Section 20, Ch. 210, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to premiums collected from health insurers on or after January 1, 2019."

33-22-1313. Association member assessments.

Compiler's Comments

2021 Amendment: Chapter 471 in (5) at end substituted "45 CFR 158.232(f)" for "45 CFR 158.221". Amendment effective July 1, 2021.

33-22-1316. Administration of reinsurance payments.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 28, Ch. 157, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 471 in (5) near beginning substituted "December 31" for "August 15". Amendment effective July 1, 2021.

Part 16
Subrogation — Notice

33-22-1601. Subrogation rights.

Compiler's Comments

Applicability: Section 6, Ch. 365, L. 1987, provided: "This act applies to policies or contracts delivered, issued for delivery, or renewed in this state after October 1, 1987."

Codification: This section is codified at both 2-18-901 and 33-22-1601.

Case Notes

Class Certification — Numerosity, Commonality, Typicality Requirements — No Abuse of Discretion: The District Court certified a class whose members had been subject to agreements with a pool of health plans containing exclusion clauses in violation of 2-18-902. The health plan pool and the plan administrator appealed. The Supreme Court held that the District Court did not abuse its discretion when it certified the class action because although the appellants' search of medical records did not turn up further class members, the numerosity requirement under Rule 23, M.R.Civ.P. (Title 25, ch. 20), may focus on other factors in specific circumstances, and the plaintiff established that sufficient potential class members will be found who did not file claims. The appellants argued that the District Court's notification of absent class members to inform them that the illegal exclusion had been removed was improper because the plaintiff used it to satisfy the numerosity requirement. However, the requirement had already been satisfied, and the notification was used as an appropriate tool to manage the litigation process. Further, although the appellants argued that the plaintiff was an inappropriate representative of the class because of the plaintiff's bad faith claim and that the plaintiff's bad faith claim destroyed the commonality and typicality requirements, the District Court did not abuse its discretion because declaratory and injunctive relief was uniform and nothing in the bad faith claim implicated issues in the class action. Lastly, the District Court did not abuse its discretion by defining the class too broadly because it appropriately narrowed the class to individuals enrolled in plans administered by the appellants containing the unlawful exclusion. Roose v. Lincoln County Employee Group Health Plan, 2015 MT 324, 381 Mont. 409, 362 P.3d 40.

Subrogation Under Motor Vehicle Liability Insurance Policy: This section does not allow subrogation in a motor vehicle liability insurance policy. Youngblood v. Am. St. Ins. Co., 262 M 391, 866 P2d 203, 50 St. Rep. 1601 (1993).

33-22-1602. Notice — shared costs of third-party action — limitation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Applicability: Section 6, Ch. 365, L. 1987, provided: "This act applies to policies or contracts delivered, issued for delivery, or renewed in this state after October 1, 1987."

Codification: This section is codified at both 2-18-902 and 33-22-1602.

Case Notes

Statute of Limitations Applicable to Subrogee in Insurance Claim: St. Paul Fire & Marine Insurance Company (St. Paul), as subrogee, sought to recover from Glassing a payment made to its insured Lynn for underinsured motorist coverage, interest, and costs. Montana has no statutory authority extending the statute of limitations for subrogation claims in such cases.

Because an insurer's claim is derived from that of the insured, St. Paul's claim was subject to the same defenses, including the statute of limitations, as though the action were sued upon by the insured and St. Paul had no claim for its damages independent of Lynn's claim. An insurer's right to subrogation attaches upon paying an insured's loss; thus, the 3-year statute of limitations in 27-2-204 applied to St. Paul's claim in the same manner that the original action brought by Lynn and, when raised after the 3-year limit, was time-barred. St. Paul Fire & Marine Ins. Co. v. Glassing, 269 M 76, 887 P2d 218, 51 St. Rep. 1437 (1994), followed in Nimmick v. St. Farm Mut. Auto. Ins. Co., 270 M 315, 891 P2d 1154, 52 St. Rep. 208 (1995). See also Skauge v. Mtn. St. Tel. & Tel., 172 M 521, 565 P2d 628 (1977), and Beedie v. Shelly, 187 M 556, 610 P2d 713 (1980).

Part 17
Preferred Provider Agreements

Part Compiler's Comments

Applicability: Section 11, Ch. 638, L. 1987, provided: "On or before January 1, 1988, a health care insurer performing the functions enumerated in this act shall notify the commissioner of its existence and continue to operate subject to the provisions of this act."

Severability: Section 10, Ch. 638, L. 1987, was a severability section.

Source: This part was drafted from the Health Insurance Association of America Health Care Reimbursement Reform Act.

Part Case Notes

Insurance Preferred Provider Agreements Upheld — Equal Protection — State Action Required for General Application — Insured and Uninsured Analyzed: In a second appeal to Gazelka v. St. Peter's Hosp., 2015 MT 127, 379 Mont. 142, 347 P.3d 1287, the plaintiff argued that treatment costs incurred at the defendant hospital violated the equal protection clause. The plaintiff also argued that the Montana Preferred Providers Agreements Act (MPPAA) unconstitutionally discriminated against uninsured patients and patients insured by insurers that did not negotiate the most favorable preferred provider agreements. The Supreme Court disagreed with the plaintiff, holding that Montana's equal protection clause contains both a specific guarantee applying to public and private action and a general guarantee. The court held that one's status as an insured or uninsured is not one's race, color, sex, culture, social origin or condition, or political or religious ideas, making the specific guarantee inapplicable. The court then held that for the general guarantee, the plaintiff must demonstrate that state action, not merely private conduct, denied the plaintiff equal protection of the laws. The court then found that the MPPAA did not deny the plaintiff equal protection of the laws because the classes of insured and uninsured were not similarly situated, health insurance is not a social condition for purposes of equal protection, and the MPPAA did not create impermissible classifications based on one's social condition, income, or economic status. Gazelka v. St. Peter's Hosp., 2018 MT 152, 392 Mont. 1, 420 P.3d 528.

33-22-1703. Definitions.

Compiler's Comments

1997 Amendment: Chapter 413 inserted definition of emergency medical condition; in definition of emergency services substituted text related to evaluation and treatment of emergency medical condition for "services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) the subscriber's or insured's health would be in serious jeopardy;

(b) the subscriber's or insured's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged"; in definition of health care insurer deleted former (c) that read: "a health maintenance organization as defined in 33-31-102" and in (d), at end, inserted "except a health maintenance organization"; and made minor changes in style. Amendment effective January 1, 1998.

1993 Amendment: Chapter 451 in definition of health care insurer deleted former (e) that read: "an administrator as defined in 33-17-102"; and made minor changes in style.

1991 Amendment: At end of (3)(d) substituted "described in 33-7-105" for "defined in 33-7-102". Amendment effective January 1, 1992.

Severability: Section 42, Ch. 586, L. 1991, was a severability clause.

1989 Amendment: In (3)(e) substituted reference to 33-17-102 for reference to 33-17-601. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Coordination: Section 9, Ch. 638, L. 1987, provided: "If Senate Bill No. 353, including the definition of "health maintenance organization", is not passed and approved, the bracketed language in section 3(3)(c) [33-22-1703(3)(c)] of this act is void." Senate Bill No. 353 was passed and approved as Ch. 457, L. 1987. The definition is contained in 33-31-102.

Attorney General's Opinions

Competitive Bidding Requirements Inapplicable to Health Maintenance Organizations, Except When Entering Preferred Provider Agreement: Definitions applicable to the Preferred Provider Agreements Act (PPA Act) under Title 33, ch. 22, part 17, and the Montana Health Maintenance Organization Act (HMO Act) under Title 33, ch. 31, are distinctive in the methods by which health services are contracted for in a preferred provider context and the traditional HMO context. The PPA Act applies to a limited class of provider agreements, not including those typically entered into by HMOs. By its passage of the PPA Act and the HMO Act, the Legislature provided two alternative health care delivery systems that would maximize options for health care cost savings. The two acts are independent. Nothing in the applicable statutes supports mandatory application to HMO provider contracts of an otherwise voluntary competitive bidding process under the PPA Act. Therefore, a health maintenance organization is not bound by the competitive bidding requirements of 33-22-1704 in contracting with health care providers, except when entering into a preferred provider agreement. 46 A.G. Op. 9 (1995).

33-22-1704. Preferred provider agreements authorized.

Compiler's Comments

1993 Amendment: Chapter 202 in (3) deleted former first sentence that read: "This part does not require that an insurer negotiate or enter into agreements with any specific provider or class of providers"; inserted (3) regarding the opportunity to submit bids or offers for preferred provider agreements; inserted (4) regarding bid or offer not being received; and inserted (5) regarding rejection of bids or offers and restricting preferred provider agreements. Amendment effective March 26, 1993.

1991 Amendment: Inserted (2) requiring terms and conditions to be met by participating providers, allowing certain price differences, and giving provider the right to enter an agreement; and deleted former (3) that read: "(3) This part does not require that an insurer negotiate or enter into agreements with any specific provider or class of providers". Amendment effective April 29, 1991, and terminates July 1, 1993.

Case Notes

Allegation of Unequal Treatment and Unequal Opportunity Sufficient for Standing: A plaintiff's allegation that a hospital's billing practices and the Montana Preferred Provider Agreements Act violated Montana antitrust laws and the Montana Constitution by discriminating against her on the basis of uninsured status was sufficient for plaintiff to pursue her claim. The Supreme Court reasoned that alleged unequal treatment and unequal opportunity to obtain a benefit is an injury for standing purposes. Gazelka v. St. Peter's Hosp., 2015 MT 127, 379 Mont. 142, 347 P.3d 1287.

Willing Provider Amendment Not Retroactive: The 1991 willing provider amendment added to this section was a substantive rather than procedural change in insurance law and, as such, absent specific legislative intent under 1-2-109, did not apply retroactively. (See 1993 amendment.) Saint Vincent Hosp. & Health Center v. Blue Cross & Blue Shield of Mont., 261 M 56, 862 P2d 6, 50 St. Rep. 1190 (1993).

Attorney General's Opinions

Competitive Bidding Requirements Inapplicable to Health Maintenance Organizations, Except When Entering Preferred Provider Agreement: Definitions applicable to the Preferred Provider Agreements Act (PPA Act) under Title 33, ch. 22, part 17, and the Montana Health Maintenance Organization Act (HMO Act) under Title 33, ch. 31, are distinctive in the methods by which health services are contracted for in a preferred provider context and the traditional HMO context. The PPA Act applies to a limited class of provider agreements, not including those typically entered into by HMOs. By its passage of the PPA Act and the HMO Act, the Legislature provided two alternative health care delivery systems that would maximize options for health care cost savings. The two acts are independent. Nothing in the applicable statutes supports mandatory application to HMO provider contracts of an otherwise voluntary competitive bidding process under the PPA Act. Therefore, a health maintenance organization is not bound by the competitive bidding requirements of this section in contracting with health care providers, except when entering into a preferred provider agreement. 46 A.G. Op. 9 (1995).

33-22-1706. Permissible and mandatory provisions in provider agreements, insurance policies, and subscriber contracts.

Compiler's Comments

2013 Amendment: Chapter 306 in (1) after "contain" deleted "certain other" and at end substituted "as provided in this part" for "including"; inserted (2) regarding approval by commissioner; substituted current language in (3) and (4) for former (1)(a), (1)(b), and (2) that read: "(a) a provision setting a payment difference for reimbursement of a nonpreferred provider as compared to a preferred provider. If the health benefit plan contains a payment difference provision, the payment difference may not exceed 25% of the reimbursement level at which a preferred provider would be reimbursed. The commissioner shall review differences between copayments, deductibles, and other cost-sharing arrangements.

(b) conditions, not inconsistent with other provisions of this part, designed to give policyholders or subscribers an incentive to choose a particular provider.

(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved by the commissioner, are subject to the prior approval of the commissioner"; in (5) at beginning substituted "A health benefit plan or other plan" for "A plan" and at end substituted "this section" for "subsection (1)"; and made minor changes in style. Amendment effective October 1, 2013.

1989 Amendment: Inserted (3) assuring dental patients freedom to choose dentist subject to same terms and conditions imposed under subsection (1).

Applicability: Section 4, Ch. 265, L. 1989, provided: "[This act] applies to contracts entered into or renewed after October 1, 1989."

33-22-1707. Rules.

Compiler's Comments

1997 Amendment: Chapter 413 substituted "may adopt" for "shall promulgate". Amendment effective January 1, 1998.

1987 Statement of Intent: The statement of intent attached to Ch. 638, L. 1987, provided: "A statement of intent is required for this bill because section 6 [7] [33-22-1707] authorizes the commissioner of insurance to promulgate rules prescribing reasonable standards relating to the accessibility and availability of health care services for persons insured under policies or contracts described in section 3 [33-22-1703]. The legislature intends that the rules adopted to implement this bill be designed to:

(1) foster accessibility and availability of health care services; and

(2) protect Montana health care insurance consumers.

The legislature further intends that the commissioner adopt rules to implement this act in accordance with 33-1-313, which permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of such law; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703 [now repealed]."

Part 18
Small Employer Health Insurance Availability Act

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 606, L. 1993, provided: "(1) A statement of legislative intent is required for this bill because:

(a) [section 4] [50-4-202, now repealed] authorizes the Montana health care authority [now abolished] to adopt rules necessary to implement [sections 1 through 20] [Title 50, ch. 4, parts 1 through 5]. In addition to those rulemaking matters addressed below, the authority may adopt rules governing such matters as its meetings, public hearings, and rules of procedure and rules of ethical conduct governing its members.

(b) [section 17] [50-4-401, now repealed] requires the Montana health care authority [now abolished] to adopt rules to establish regional health care planning boards within the health care planning regions established in [section 17] [50-4-401, now repealed] and to establish a procedure for selection of regional board members. The rules establishing the boards must specify the number of members, any relevant qualifications, and the operations and duties of the boards and must provide for a funding mechanism by grant from the authority. In addition, the rules must provide for consideration of a balance between rural and urban interests in the selection of regional board members. The procedure for selection of the board members must provide for public notice of the selection process.

(c) [section 10] [50-4-501, now repealed] grants the commissioner of insurance the authority to adopt rules specifying uniform health insurance claim forms and procedures. The forms should be based upon existing formats, be as short as possible, and be compatible with electronic data transmission.

(d) [section 19] [50-4-502, now repealed] requires the authority to adopt rules relating to the unified health care data base. The authority's rules must specify in comprehensive detail what information is required to be provided by health care providers and the times at which the information is to be provided. The rules must also provide for audit procedures to determine the accuracy of the filed data. The confidentiality provisions must be consistent with other state laws governing the confidentiality of public records, including medical records, and must apply to employees of the authority and to others receiving or using records in the data base.

(e) [sections 23, 26, 27, 30, 31, and 34 through 36] [33-22-1802, 33-22-1808, 33-22-1809, 33-22-1812 through 33-22-1814, 33-22-1818, 33-22-1819, and 33-22-1822] [33-22-1812, 33-22-1818, and 33-22-1819 now repealed] require the commissioner of insurance to adopt rules governing small employer group health plans. In determining the basic benefits package, the commissioner shall make objective determinations, supported by available data, concerning the type of benefits required and shall determine that the benefits to be required are cost-effective pursuant to the Small Employer Health Insurance Availability Act. The commissioner may adopt rules providing for a transition period to allow small employer carriers to comply with certain provisions of the act. The commissioner may approve the establishment of additional classes of businesses only if the commissioner determines that the additional classes would enhance the efficiency and fairness of the small employer health insurance market. The commissioner is required under the act to adopt rules to implement and administer the act.

(f) [section 44] [50-4-612] requires the authority to adopt rules implementing [sections 37 through 44] [Title 50, ch. 4, part 6, now repealed]. The rules adopted by the authority must specify the form and content of applications for certificates of public advantage; details of the reconsideration, revocation, hearing, and appeal processes; and other matters as the authority determines necessary. The rules that are adopted by the authority must also provide the authority with direct supervision and control over the implementation of cooperative agreements between facilities.

(2) In preparing the plan required by [section 5] [50-4-301, now repealed], the authority shall consider the following matters for the following features of the plan:

(a) a unified health care budget. The authority shall consider the development of a state health care budget based upon the budgets submitted by the regional health care planning boards.

(b) caps for provider expenditures. The authority shall consider a process for adopting mandatory limits on provider expenses, including fees and salaries.

(c) global budgeting for all health care spending. The authority shall consider adopting a budgeting process, with public involvement, by which a unified health care budget is determined.

(d) controlled capital expenditures. The authority shall consider adopting a system to control capital expenditures.

(e) binding cap on overall expenditures. The authority shall consider adopting mandatory limits on all types of expenditures of health care providers, including capital expenditures, small equipment purchases, personnel costs, and all other types of operating costs."

Severability: Section 46, Ch. 606, L. 1993, was a severability clause.

Part Administrative Rules

Title 6, chapter 6, subchapter 50, ARM Small employer health insurance rules.

33-22-1801. Short title.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1802. Purpose.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

Title 6, chapter 6, subchapter 50, ARM Small employer health insurance rules.

33-22-1803. Definitions.

Compiler's Comments

2011 Amendment: Chapter 227 in definition of basic health benefit plan at end deleted "and that provides the benefits required by 33-22-1827"; and in definition of standard health benefit plan at end deleted "and that contains the provisions required pursuant to 33-22-1828". Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

2007 Amendment: Chapter 356 in definition of dependent in (b) after "child" deleted "under 19 years of age" and substituted "under 25 years of age" and (b)(i) through (b)(iv) specifying criteria for an unmarried child under 25 years of age for "an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 469 in definition of health benefit plan near middle of second sentence after "benefits" inserted "as defined in 33-22-140"; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendments — Composite Section: Chapter 103 deleted definition of board that read: ""Board" means the board of directors of the program established pursuant to 33-22-1818"; deleted definition of plan of operation that read: ""Plan of operation" means the operation of the program established pursuant to 33-22-1818"; deleted definition of program that read: ""Program" means the Montana small employer health reinsurance program created by 33-22-1818"; deleted definition of reinsuring carrier that read: ""Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 472 in definition of bona fide association deleted former (f) that read: "(f) meets any additional requirements required by law"; in definition of eligible employee inserted third sentence to include persons eligible for coverage under 2-18-704; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 416 deleted definition of benefit equivalency that read: ""Benefit equivalency" means a method developed by the small employer carrier for comparing the types of health care services and articles covered under a health benefit plan with the types of health care services required to be covered under a uniform, basic, or standard health benefit plan"; in definition of benefit value, after "means", substituted current language for "an actuarially based method developed by the small employer carrier for comparing the value of determinable contingencies covered under a health benefit plan with the value of determinable contingencies required under a uniform, basic, or standard health benefit plan"; inserted definition of bona fide association; in definition of health benefit plan, in second sentence after "does not include", substituted "coverage of excepted benefits if coverage is provided under a separate policy, certificate, or contract of insurance" for "(a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;

(b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

(c) automobile medical payment insurance"; deleted definition of late enrollee (see 1997 Session Law for former text); deleted definition of qualifying previous coverage (see 1997 Session Law for former text); in definition of small employer, near beginning, inserted "bona fide", substituted "with respect to a calendar year and a plan year" for "on at least 50% of its working days during the preceding calendar quarter", after "employed at least" substituted "2 but not more than 50" for "3 but not more than 25", and substituted "during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year" for "the majority of whom were employed within this state or were residents of the state", in (c) inserted "bona fide", and deleted (c)(i), (c)(ii), and (c)(iii) that read: "(i) has been in existence for 1 year prior to January 1, 1994;

(ii) provides a health benefit plan to employees of its members as a group; and

(iii) does not deny coverage to any small employer member of its association or any employee of its small employer members who applies for coverage as part of a group"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), sections 1, 5 through 8, 17 through 40 [section 21 is 33-22-1803], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Coordination — Amendment Void: The amendment to this section made by sec. 34, Ch. 531, L. 1997, was rendered void by sec. 51, Ch. 416, L. 1997, which provided: "If House Bill No. 131 is passed and approved and if it amends 33-22-1803(15), then 33-22-1803(15), amending the definition of "health benefit plan", must read as provided in [section 21 of this act]." House Bill No. 131 was approved as Ch. 531, L. 1997, and amended 33-22-1803(15); therefore, the amendment to 33-22-1803(15) contained in Ch. 531, L. 1997, is void and the definition of health benefit plan in Ch. 416, L. 1997, applies.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendments: Chapter 377 in definition of assessable carrier, near beginning before "carriers", deleted "individual" and after "insurance" substituted "including excess of loss and stop-loss disability insurance" for "and all carriers of group disability insurance, excluding the state group benefits plan provided for in Title 2, chapter 18, part 8, the Montana university system health plan, and any self-funded disability insurance plan provided by a political subdivision of the state"; substituted present definition of basic health benefit plan for former definition that read: ""Basic health benefit plan" means a lower cost health benefit plan developed pursuant to 33-22-1812"; inserted definitions of benefit equivalency and benefit value; in definition of carrier, in second sentence after "organization", deleted "and, to the extent permitted by the Employee Retirement Income Security Act of 1974, a multiple employer welfare arrangement"; deleted definition of committee that read: ""Committee" means the health benefit plan committee created pursuant to 33-22-1812"; in definition of eligible employee, at end of first sentence, inserted language concerning an employee who works between 20 hours and 40 hours per week; in definition of qualifying previous coverage, in (b) and (c) before "basic", inserted "minimum"; in definition of small employer, in two places in (c)(iii), inserted "small employer"; substituted present definition of standard health benefit plan for former definition that read: ""Standard health benefit plan" means a health benefit plan developed pursuant to 33-22-1812"; and made minor changes in style.

Chapter 379 in definition of case characteristics, after "provided that", inserted "gender"; in definition of late enrollee, in (a), substituted "the individual requests enrollment within 30 days after termination of the qualifying previous coverage and" for "the individual meets each of the following conditions", at end of (a)(i) inserted "or", and deleted (a)(iii) that read: "(iii) the individual requests enrollment within 30 days after termination of the qualifying previous coverage"; and made minor changes in style.

Coordination Instruction: Section 15, Ch. 377, L. 1995, provided: "If House Bill No. 533 is passed and approved and contains a section implementing a uniform health benefit plan, then the bracketed phrases in 33-22-1803 must be included." House Bill No. 533 was passed and approved containing such a section; therefore, the bracketed phrases were included in the text of this section.

Saving Clause: Section 16, Ch. 377, L. 1995, was a saving clause.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 6.6.5001 Definitions.

33-22-1804. Applicability and scope.

Compiler's Comments

2015 Amendment: Chapter 63 deleted former (4) that read: "(4) This part does not apply to an individual health benefit plan for which the premium is paid by a small employer pursuant to 33-22-166." Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2013 Amendment: Chapter 349 inserted (4) concerning premiums paid pursuant to 33-22-166. Amendment effective January 1, 2014.

1999 Amendment: Chapter 403 in (3) at beginning of first sentence inserted clause concerning federal opinions and court rulings and after "part" substituted "does not apply" for "applies" and inserted second sentence regarding application of part to individual health benefit plan; and made minor changes in style. Amendment effective October 1, 1999.

Saving Clause: Section 2, Ch. 403, L. 1999, was a saving clause.

1997 Amendment: Chapter 416 inserted (1)(d) concerning premium paid by employee; in (2) substituted current language concerning premium paid by payroll deduction for "A payroll deduction or a list-billed premium is not a reimbursement for the purposes of subsection (1)(b)"; inserted (3) concerning applicability of part to individual health benefit plan; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 22 is 33-22-1804], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36][33-22-142] applies to events occurring after June 30, 1996."

1995 Amendment: Chapter 377 in (1)(c), at end, inserted exception clause concerning plans or programs funded by employees; inserted (2) concerning a payroll deduction or a list-billed premium; and made minor changes in style.

Saving Clause: Section 16, Ch. 377, L. 1995, was a saving clause.

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 6.6.5004 Applicability, scope, and transition.

33-22-1808. Establishment of classes of business.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 6.6.5082 Establishment of classes of business.

33-22-1809. Restrictions relating to premium rates.

Compiler's Comments

2009 Amendment: Chapter 271 in (1)(e) at end after "15%" deleted "of that coverage". Amendment effective July 1, 2009.

1999 Amendment: Chapter 472 deleted former (1)(f) that read: "(f) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

(ii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business"; deleted former (5)(c) that read: "(c) The filing required in subsection (5)(b) must contain the small employer carrier's benefit value"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 416 in (5)(c), after "small employer carrier's", deleted "benefit equivalency and". Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 23 is 33-22-1809], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

1995 Amendments: Chapter 377 in (1)(g)(i), at end, inserted sentence concerning differences among base premium rates; deleted (1)(i) that read: "(i) The commissioner shall adopt rules to implement the provisions of this section and to ensure that rating practices used by small employer carriers are consistent with the purposes of this part, including rules that ensure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences because of the nature of the groups"; inserted (5)(c) concerning contents of filing required in subsection (5)(b); inserted (6) concerning prior approval of rating methods; and made minor changes in style.

Chapter 378 deleted (1)(b)(ii) that read: "(ii) if the Montana health care authority established by 50-4-201 certifies to the commissioner that the cost containment goal set forth in 50-4-303 is met on or before January 1, 1999, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage may not vary from the index by more than 20% of the index rate". Amendment effective July 1, 1995.

Saving Clause: Section 16, Ch. 377, L. 1995, was a saving clause.

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1810. Renewability of coverage.

Compiler's Comments

2001 Amendment: Chapter 227 in (1)(f)(ii) near beginning after "nonrenewal of" substituted "all small employer health benefit plans" for "any health benefit plans"; in (3)(a) near beginning after "renew" substituted "all of its health benefit plans" for "a health benefit plan"; inserted (3)(b) providing that 33-22-524(3) applies to a small employer carrier that elects to renew only a portion of its plans; and made minor changes in style. Amendment effective October 1, 2001.

Reentry by Carrier: Section 12, Ch. 377, L. 1995, provided: "A carrier that elected to not renew all of its health benefit plans pursuant to 33-22-1810(1)(f) may notify the commissioner within 180 days of [the effective date of this act] [effective October 1, 1995] of its intent to comply with Title 33, chapter 22, part 18."

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1811. Availability of coverage — required plans.

Compiler's Comments

2013 Amendment: Chapter 169 in (1)(a) deleted former last sentence that read: "One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan"; and deleted former (1)(c) that read: "(c) A small employer carrier that elects not to comply with the requirements of subsections (1)(a) and (1)(b) may continue to provide coverage under health benefit plans previously issued to small employers in this state for a period of no more than 7 years from October 1, 1995, if the carrier:

(i) complies with all other applicable provisions of this part, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this section;

(ii) does not amend or alter the benefits and coverages of the previously issued health benefit plans unless required to do so by law or rule; and

(iii) complies with all applicable provisions of Public Law 104-191." Amendment effective April 9, 2013.

1999 Amendments — Composite Section: Chapter 87 in (3)(d)(i) inserted second and third sentences providing that a small employer carrier may not consider employees who waive coverage because they are covered under another health plan with respect to minimum participation requirements for groups of four or more and allowing the carrier to require that at least two eligible employees participate in a plan. Amendment effective October 1, 1999.

Chapter 472 in (1)(b)(i) in first sentence after "issue" substituted "all plans marketed under this part" for "a basic health benefit plan or a standard health benefit plan" and after "applies for" substituted "a" for "either" and deleted former second sentence that read: "If, pursuant to Public Law 104-191, an agency of the United States or a court does not prohibit a small employer carrier from doing so, a small employer carrier may offer and issue a group health benefit plan other than a basic or standard plan on an underwritten basis"; in (1)(b)(ii) in first sentence after "employers" substituted "all plans marketed under this part" for "at least one basic health benefit plan and at least one standard health benefit plan"; inserted (1)(c)(iii) requiring compliance with Public Law 104-91; in (3)(a)(i) near middle of first sentence after "following the" substituted "individual's enrollment date" for "effective date of the individual's coverage"; in (3)(b) inserted second sentence regarding waiver of time periods applicable to preexisting condition exclusions or limitations; in (3)(e)(ii) near beginning after "modify a" substituted "plan marketed under this part" for "basic or standard health benefit plan"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 416 in (1)(a), in first sentence, substituted "must have approved for issuance to small employer groups" for "shall offer to small employers"; in (1)(b)(i) inserted second sentence concerning issuance of standard or basic plan on underwritten basis; in (1)(b)(ii)(A), after "applying for a", deleted "basic or standard"; at end of (3)(a)(i) substituted "33-22-140" for "33-22-110(2)"; inserted (3)(a)(ii) prohibiting use of preexisting condition exclusion more restrictively than 33-22-514; in (3)(b), near middle in two places, substituted "creditable coverage" for "qualifying previous coverage" and after "date not more than" substituted "63 days" for "30 days"; deleted former (4)(a)(i) that read: "to a small employer when the small employer is not physically located in the carrier's established geographic service area"; in (4)(a)(i), near beginning, substituted "employer whose employees do" for "employee when the employee does", inserted "small employer", and near end inserted "for a network plan, as defined in 33-22-140"; in (4)(a)(ii) inserted second sentence concerning uniformity in denial of coverage; in (4)(b), in first sentence, after "pursuant to subsection (1)", deleted "for any period of time" and after "for which the commissioner determines that" substituted current language concerning reserves of small employer carrier and prohibiting offer of coverage for 180 days or until carrier has demonstrated sufficient reserves for "requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 24 is 33-22-1811], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

1995 Amendments: Chapter 377 deleted former (1)(c) that read: "(c) The provisions of this section are effective 180 days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to 33-22-1812, provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation"; inserted (1)(c) concerning small employer carrier coverage under previously issued health benefit plans; inserted (3)(e)(iii) concerning a small employer carrier securing a waiver from employees declining coverage; and inserted (3)(e)(iv) concerning denial of coverage to an employer inducing an eligible employee to decline coverage due to health issues.

Chapter 379 in (3)(b), in first sentence, substituted "more than 30 days" for "less than 30 days".

Chapter 522 at end of (3)(a) substituted "33-22-110(2)" for "33-22-110, except that the condition may be excluded for a maximum of 12 months". Amendment effective April 21, 1995.

Saving Clause: Section 16, Ch. 377, L. 1995, was a saving clause.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Section 4, Ch. 522, L. 1995, was a severability clause.

Code Commissioner Correction: In (3)(a) the Code Commissioner substituted "33-22-110" for "33-22-216". Section 33-22-216 was repealed by Ch. 451, L. 1993, and Ch. 451 enacted 33-22-110, which deals with preexisting conditions, the subject matter of 33-22-216. Section 84, Ch. 10, L. 1993, directed the Code Commissioner to make the correction.

Administrative Rules

ARM 6.6.5058 Requirement to insure entire groups.

33-22-1813. Standards to ensure fair marketing.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) deleted former second sentence that read: "If a small employer carrier denies coverage other than the basic or standard health benefit plans to a small employer on the basis of claims experience of the small employer or the health status or claims experience of its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan or a standard health benefit plan"; and in (7) after "carrier of" substituted "health insurance coverage for" for "an application for coverage from". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 6.6.5078 Fair marketing standards.

33-22-1814. Restoration of terminated coverage.

Compiler's Comments

Effective Date: Section 47(3), Ch. 606, L. 1993, provided that this section is effective January 1, 1994.

33-22-1815. Qualifications for voluntary purchasing pool.

Compiler's Comments

2017 Amendment: Chapter 151 in (6)(b) at beginning deleted "Except for the rates for the small business health insurance pool established in 33-22-2001"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

Retroactive Applicability: Section 31(2), Ch. 399, L. 2007, provided: "(2) For purposes of receiving a tax credit, [this act] and Chapter 595, Laws of 2005, apply retroactively, within the meaning of 1-2-109, to eligible premiums paid after December 31, 2005, by eligible small employers registered under 33-22-208 [33-22-2008, now repealed]."

2005 Amendment: Chapter 595 in (6)(a) near middle after "entire" inserted "purchasing pool"; in (6)(b) at beginning inserted exception clause; in (6)(c) at end after "employers" deleted "or by eligible employees and their dependents"; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

2003 Amendment: Chapter 376 in (1) reduced required number of eligible employees from 1,000 to 51; in (2) in second sentence before "eligible employees" substituted "at least 51" for "more than 50"; in (6)(a) deleted former introductory clause and (6)(a)(i) that read: "It has the option of using the following types of rating arrangements with the disability insurance policies, certificates, or contracts:

(i) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that rate each member employer separately are subject to the provisions of this part"; inserted (6)(b) requiring rates to be set pursuant to 33-22-1809; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 472 in (2) in second sentence after "more than" substituted "50" for "25". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-22-1816. Commissioner powers and duties — application for registration — reporting insolvency.

Compiler's Comments

2017 Amendment: Chapter 151 deleted former (6) that read: "(6) The commissioner may exempt the small business health insurance purchasing pool established in 33-22-2001 from the reporting requirements under subsection (3)." Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2009 Amendment: Chapter 87 inserted (6) allowing the commissioner to exempt the small business health insurance purchasing pool from reporting requirements; and made minor changes in style. Amendment effective July 1, 2009.

1999 Amendment: Chapter 472 in (3) at beginning inserted exception clause; and inserted (5) allowing a voluntary purchasing pool to operate on a fiscal year other than the calendar year. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-22-1820. Periodic market evaluation — report.

Compiler's Comments

1997 Amendment: Chapter 531 at beginning of first sentence, after "The", substituted "commissioner may" for "board shall" and after "3 years to the" substituted "governor or other interested persons" for "commissioner".

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 377 in first sentence, after "board", deleted "in consultation with members of the committee".

Saving Clause: Section 16, Ch. 377, L. 1995, was a saving clause.

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

33-22-1821. Waiver of certain laws.

Compiler's Comments

2011 Amendment: Chapter 227 at beginning deleted "Except as provided in 33-22-1827"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

1995 Amendment: Chapter 377 substituted text concerning a small employer carrier excluding any category of licensed health care practitioner and any benefit or coverage for "A law that requires the inclusion of a specific category of licensed health care practitioners and a law that requires the coverage of a health care service or benefit do not apply to a basic health benefit plan delivered or issued for delivery to small employers in this state pursuant to this part but do apply to a standard health benefit plan delivered or issued for delivery to small employers in this state pursuant to this part."

Saving Clause: Section 16, Ch. 377, L. 1995, was a saving clause.

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

33-22-1822. Administrative procedure.

Compiler's Comments

Effective Date: Section 47(4), Ch. 606, L. 1993, provided that this section is effective July 1, 1993.

Part 19

Obstetricians and Gynecologists — Primary Care Physicians

Part Compiler's Comments

Preamble: The preamble attached to Ch. 198, L. 1997, provided: "WHEREAS, the specialty of obstetrics and gynecology is devoted to primary and preventative health care of women throughout their lifetime; and

WHEREAS, significant numbers of women view their obstetrician and gynecologist as their primary or only physician; and

WHEREAS, for many women, an obstetrician or gynecologist is often the only physician they see regularly during their reproductive years; and

WHEREAS, a general medical examination was the second most frequently cited purpose for patient visits to obstetricians and gynecologists in 1989 and 1990; and

WHEREAS, obstetricians and gynecologists refer their patients less frequently than other primary care physicians, thus avoiding costly and time-consuming referrals to specialists."

Severability: Section 12, Ch. 198, L. 1997, was a severability clause.

Applicability: Section 13, Ch. 198, L. 1997, provided: "[This act] applies to each health benefit plan that is issued, delivered, issued for delivery, or renewed in Montana on or after January 1, 1998."

Effective Date: Section 14, Ch. 198, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 2, 1997.

Part 21
Fertility Preservation Services

33-22-2101. Legislative findings — purpose.

Compiler's Comments

Effective Date: Section 11, Ch. 782, L. 2023, provided that this section is effective January 1, 2024.

Applicability: Section 12, Ch. 782, L. 2023, provided: "[This act] applies to insurance policies, certificates, and contracts issued or renewed on or after January 1, 2024."

33-22-2102. Definitions.

Compiler's Comments

Effective Date: Section 11, Ch. 782, L. 2023, provided that this section is effective January 1, 2024.

Applicability: Section 12, Ch. 782, L. 2023, provided: "[This act] applies to insurance policies, certificates, and contracts issued or renewed on or after January 1, 2024."

33-22-2103. Coverage of fertility preservation services.

Compiler's Comments

Effective Date: Section 11, Ch. 782, L. 2023, provided that this section is effective January 1, 2024.

Applicability: Section 12, Ch. 782, L. 2023, provided: "[This act] applies to insurance policies, certificates, and contracts issued or renewed on or after January 1, 2024."

33-22-2104. Cancer screening account.

Compiler's Comments

Effective Date: Section 11, Ch. 782, L. 2023, provided that this section is effective July 1, 2023.

Applicability: Section 12, Ch. 782, L. 2023, provided: "[This act] applies to insurance policies, certificates, and contracts issued or renewed on or after January 1, 2024."

CHAPTER 23
CASUALTY INSURANCE

Chapter Case Notes

Plain Language of Policies Providing Insurance on Rental Car Construed — Primary Versus Excess Coverage: Hudson used a credit card to rent a 1995 Ford Mustang convertible from P.C. Rental, Inc. (P.C.). Three days later, Hudson lost control of the car, resulting in damages rendering the vehicle a total loss. At the time of the accident, P.C. had a commercial lines policy through Empire Fire and Marine Insurance Company (Empire) that included liability and physical damage coverage. Hudson did not own a vehicle and was not covered under a personal policy, but auto rental insurance was provided by the company whose credit card Hudson used for the rental. Empire paid P.C. the agreed actual cash value of the vehicle, minus a $1,000 policy deductible, then sold the damaged vehicle for salvage and received an additional $1,108. The credit card company, Visa U.S.A. (Visa), also paid P.C. about $7,800 to cover P.C.'s deductible and lost rental fees. P.C. then brought a breach of contract action against Hudson for failing to return the vehicle in the same condition in which it was rented, as required by the rental agreement. Hudson alleged that Chase Manhattan Bank (Chase), as issuer of the credit card, was responsible for damages sustained to the rental car under the terms of the rental insurance. Hudson subsequently filed for bankruptcy and assigned all rights in the third-party action against Chase to P.C. P.C. then amended the complaint to include the credit card company as defendant, alleging that the rental insurance provided coverage on a 24-hour basis for damage to a car rented with the credit card up to the full value of the car. Visa denied P.C.'s allegations regarding the rental insurance, alleged that Visa had met its obligations under the policy by covering P.C.'s deductible and lost rental fees, and moved for summary judgment, which was granted. The District Court concluded that Hudson was an insured under the liability policy provided to P.C. by Empire and thus Empire was not entitled to subrogate against its own insured. The court determined that because both policies provided damage coverage for the same vehicle, it was necessary to look to the "other insurance" clauses of the policies. The Empire policy stated that its coverage was primary, while the Visa policy stated that its coverage was excess coverage, so Empire was not entitled to recover any of the amount that it paid to P.C. from Visa. On appeal, the Supreme Court affirmed. Given the nature of the coverage available, no determination of whether Hudson was an insured under Empire's physical damage coverage was necessary or possible under the policies. The District Court did not err when it concluded that, based on the clear language of the policies, P.C.'s physical damage coverage was primary and Visa's rental insurance was excess. P.C. Rental, Inc. v. Chase Manhattan Bank, 2000 MT 106, 299 M 315, 998 P2d 1168, 57 St. Rep. 430 (2000).

Gradual Accumulation of Smoke and Soot — "Sudden and Accidental" Construed — Damage Not Covered Under Pollution Exception to All-Risk Homeowner's Policy: During a 4- or 5-week holiday season, the Sokoloskis burned scented candles in their home, which caused a discharge of smoke and soot, damaging their home and belongings. Their insurer denied coverage under a pollution exclusion because smoke and soot were defined as pollutants in the policy. The District Court held that coverage was barred under the exclusion and that the damages were not sudden and accidental. The Supreme Court affirmed on both issues. The very use of the words "sudden" and "accidental" reveals a clear intent to state two separate requirements, so that "sudden" means more than "unexpected". "Sudden", even if it includes the concept of unexpectedness, also encompasses a temporal element because unexpectedness is already expressed by the word "accidental". Having determined that the damage was not sudden, the Supreme Court did not address the additional requirement of being accidental. Under the clear language of the policy definitions and exclusion clause, coverage was properly barred and summary judgment proper. Sokoloski v. Am. W. Ins. Co., 1999 MT 93, 294 M 210, 980 P2d 1043, 56 St. Rep. 392 (1999), citing N. Ins. Co. of N.Y. v. Aardvark Assoc., Inc., 942 F2d 189 (3rd Cir. 1991), and followed in Travelers Cas. & Sur. Co. v. Ribi Immunochem Research, Inc., 2005 MT 50, 326 M 174, 108 P3d 469 (2005).

Liability Coverage of Newly Acquired Vehicle — Date of Delivery Determinative: Powell purchased a truck from his brother and sister-in-law, making monthly payments to his brother. During the time that Powell made payments, the truck remained in the possession of Powell's brother, who continued to use the truck as in the past. In January, Powell's brother executed a title in Powell's name, but the intent of both parties was that the truck would be owned by Powell after the payments were completed. When all of the payments were completed, Powell's brother executed a bill of sale and canceled his insurance policy on the truck. Several days later, Powell struck and killed a pedestrian with the truck. The pedestrian's insurance company claimed that title to the truck passed more than 30 days prior to the accident and that because Powell had failed to give notice to the company of his new ownership of the truck, the truck was not a "newly acquired car" within the meaning of the insurance policy. The Supreme Court held that "delivery" of the truck, as contemplated by the insurance policy, would be construed in the ordinary sense of the word to mean the passage of physical possession of the truck. Because that occurred on July 10, when the payments were completed and the bill of sale signed, the period for notification of a newly acquired car had not yet expired and the policy was therefore construed to apply to the truck. St. Farm Fire & Cas. Co. v. Powell, 274 M 92, 906 P2d 198, 52 St. Rep. 1138 (1995).

Business Pursuits — Steer-Roping Contest: Insured's policy on his ranch excluded business pursuits other than, among other things, farming. For 3 years he held three or four steer-roping contests a year in an arena he built. Nonprofessionals paid a fee and there was prize money, with insured keeping some of the fee money. Insured's own testimony showed he was regularly engaged in the contests for profit and thus was engaged in a business pursuit excluded from policy coverage. A summary judgment for insurer was therefore proper in insured's suit for failure to defend insured and pay an injured steer roper because there was no issue of material fact. Heggen v. Mtn. W. Farm Bureau Mut. Ins. Co., 220 M 398, 715 P2d 1060, 43 St. Rep. 475 (1986).

"Business Pursuit" — Definition: Montana has not adopted criteria for determining what is a business pursuit for purposes of an insurance policy clause excluding a business pursuit from coverage. The presence of a profit motive (not actual profit) is one characteristic of a business pursuit, and continually or regularly conducted activity may be a business pursuit even though it is not the primary occupation of the insured. In this case, insured's testimony that he had income and expenses relating to the pursuit and claimed them on his tax returns established a profit motive. Heggen v. Mtn. W. Farm Bureau Mut. Ins. Co., 220 M 398, 715 P2d 1060, 43 St. Rep. 475 (1986).

Liability Insurance — Recovery on Policy Not Defeated by Negligence of Insured: Insurer brought declaratory judgment action against insured for indemnity on basis that gasoline leakage was not covered by policy. In Town Pump, Inc. v. Diteman, 622 P2d 212, 38 St. Rep.

54 (1981), the insured had been denied indemnity coverage against its contractor for the same gasoline leakage because of the insured's own negligence. The District Court found insured 50% negligent and ordered recovery on that basis. The Supreme Court reversed the District Court decision and ordered full recovery for insured against insurer on the basis that mere negligence of a policyholder is not a defense to enforcement of a policy and full recovery by an insured is in order in the absence of a cooperation clause or allegations of intentional wrongdoing. Gen. Ins. Co. of Am. v. Town Pump, Inc., 214 M 27, 692 P2d 427, 41 St. Rep. 2292 (1984).

No Liability Coverage for Expected or Intentional Damage: The insurer issued a manufacturers' and contractors' liability policy to insured, a volunteer fire company. The insured made the purposeful decision to cease fighting a residential fire because the dwelling owners were not members of the fire company. The insured sought coverage under the policy as to damages claimed by the dwelling owners when their home was destroyed by the fire. The insured's decision to stop fighting the fire was intentional, and the resulting harm was predictable. Therefore, the insured was not covered under the policy, which included coverage for an "occurrence", meaning an accident that causes damage neither expected nor intended. USF&G v. Rae Volunteer Fire Co., 212 M 450, 688 P2d 1246, 41 St. Rep. 1857 (1984), followed in Burns v. Underwriters Adjusting Co., 234 M 508, 765 P2d 712, 45 St. Rep. 2089 (1988), distinguishing NW. Nat'l Cas. Co. v. Phalen, 182 M 448, 597 P2d 720 (1979). See also Employers Mut. Cas. Co. v. Fisher Builders, Inc., 2016 MT 91, 383 Mont. 187, 371 P.3d 375.

Policy Language Unambiguous: The insurer issued a liability policy to the insured, a volunteer fire company. The insured made the purposeful decision to cease fighting a residential fire because the dwelling owners were not members of the fire company. The insured sought coverage under the policy as to damages claimed by the dwelling owners when their home was destroyed by the fire. The insured fire company claimed the policy language was ambiguous as it did not name the specific person who could activate the provision concerning the expectations or intentions of the company; therefore, the doubt should be resolved in favor of the insured. The policy language was not ambiguous, and the insured's board chairman had authority to activate the exclusion provisions. As a consequence, the insured can have an "expectation" of property damage through its authorized officer, a cause of damage not covered by the terms of the policy. USF&G v. Rae Volunteer Fire Co., 212 M 450, 688 P2d 1246, 41 St. Rep. 1857 (1984).

Statute of Limitations — Applicability to Subrogation: A subrogation claim by insurance company is derived from the claim of the insured and is subject to the same defenses, including the Statute of Limitations, as though the action were sued upon by the insured. Beedie v. Shelley, 187 M 556, 610 P2d 713 (1980).

Part 1
General Provisions

33-23-102. Existence of insurance not to be made evident.

Case Notes

No Prejudicial Mention of Insurance Coverage: The trial court is charged with determining if any particular mention of liability insurance is sufficiently prejudicial to warrant a new trial. This determination depends upon the circumstances and manner in which the subject of insurance is brought into the case. In this case, the court did not abuse its discretion when it denied plaintiffs' posttrial motion for a new trial because of the alleged interjection of insurance. In the first claim relating to an improper mention, a question was posed to demonstrate the witness's general lack of judgment and thereby undermine his credibility as a witness. It therefore falls within the exception to Rule 411, M.R.Ev. (Title 26, ch. 10). The other alleged improper references did not directly indicate to the jury that the plaintiff had insurance and therefore are without merit. Massman v. Helena, 237 M 234, 773 P2d 1206, 46 St. Rep. 764 (1989).

Part 2
Motor Vehicle Liability

Part Case Notes

Underinsured Motorist Coverage Conditioned on Being Otherwise Covered by Insurance Provider — Coverage for Motorcycles Not Offered by Insurance Provider — Unattainable Condition Precedent Violative of Public Policy — Denial of Medical Payment Coverage Under Contract Conditions Proper: A plaintiff was involved in a vehicle collision while riding his motorcycle. The plaintiff insured his vehicles through USAA, including underinsured motorist coverage and medical payment coverage. Because USAA did not provide motorcycle coverage in

Montana, the plaintiff's motorcycle was insured through another provider, but the coverage did not include underinsured motorist or medical payment coverage. The language of the plaintiff's USAA policy covered underinsured motorist coverage for the plaintiff, but the policy explicitly excluded any of the plaintiff's vehicles that were not insured with USAA. Despite providing coverage if the plaintiff had been riding a motorcycle owned by another person, the policy did not cover the plaintiff's motorcycle. Because the exclusion of coverage was an unattainable condition precedent, it violated public policy, and the Supreme Court reversed the District Court's summary judgment in USAA's favor. Unlike the underinsured motorcyclist coverage, the medical payment coverage policy specified the categories of noncovered vehicles included in the coverage. Because motorcycle use did not satisfy the policy's enumerated coverage instances and because public policy was not violated by a denial of coverage in which the compensation has not been paid for the coverage, even if personal and portable, the District Court did not err by entering summary judgment in favor of USAA regarding the medical payment coverage. Goss v. USAA Cas. Ins. Co., 2021 MT 289, 406 Mont. 215, 498 P.3d 187.

Corporate Insurance Policy Restriction on Class of Insureds — No Violation of Reasonable Expectations Doctrine: The plaintiff insured, a Hutterite colony, sued its insurer after the insurer denied a claim the plaintiff submitted on behalf of two members of the colony who were injured in an accident in a vehicle owned by a third party. The insurer denied the claim on the basis that the two members did not meet the definition of an insured, which the corporate insurance policy restricted to individuals occupying covered vehicles. The District Court granted summary judgment to the insurer, concluding that the colony members did not constitute insureds under the insurance policy and that it was not a violation of the plaintiff's reasonable expectations for the corporate insurance policy to restrict the class of insureds. On appeal, the Supreme Court affirmed, holding that the colony members did not meet the definition of an insured under the policy because they were not occupying a covered vehicle at the time of the accident. Because they would have qualified for coverage had they been occupying a colony-covered vehicle at the time of the accident, the policy was not illusory and the restriction did not violate the plaintiff's reasonable expectations. Kilby Butte Colony, Inc. v. St. Farm Mut. Auto. Ins. Co., 2017 MT 246, 389 Mont. 48, 403 P.3d 664.

Dismissal of Insurer Improper in Light of Dispute Over Amount of Damages Owing in Excess of Liability Limits: Following a vehicle accident, a couple sought recovery for injuries and loss of consortium and also alleged that the damages exceeded the limits of defendants' coverage, entitling them to recover from their own policy. The District Court bifurcated the claims and then sua sponte dismissed the insurer from the action without prejudice. The couple sought to reverse the dismissal order, and the Supreme Court obliged. The District Court held that because a jury had not determined the couple's damages and because the insurer had agreed to pay the amount of the verdict up to the policy limits, there was no dispute between the couple and the insurer. However, the Supreme Court noted that the couple and the insurer disagreed on the amount of damages in excess of the amount that was payable under the liability limits of the policy. This was a dispute that the couple was entitled to litigate, so dismissal of the insurer was improper, and the case was remanded for further proceedings. State ex rel. Gadbaw v. District Court, 2003 MT 127, 316 M 25, 75 P3d 1238 (2003), following Dill v. District Court, 1999 MT 85, 294 M 134, 979 P2d 188 (1999). See also Dias v. Healthy Mothers, Healthy Babies, Inc., 2002 MT 323, 313 M 172, 60 P3d 986 (2002).

Accident Involving Multiple Liable Insureds — Maximum Insurance Coverage Limited to Policy Amount: In a case of first impression, the Supreme Court was asked to determine whether persons insured under one policy, who are both found legally liable for causing one accident, must each be covered by the mandatory limits in 61-6-103. The District Court found that Montana's vehicle insurance omnibus statutes do not require separate, full coverage for multiple insureds when each insured is liable for independent acts of negligence arising from one accident. The court reasoned that 61-6-103 refers to each accident, not each separate act of negligence that may have contributed to causing the accident, and held that as a matter of law, once the injured person's damages resulting from the one accident exhaust the $50,000 policy limit, the insurer's obligation to cover any further claims ceases. The Supreme Court noted that if the Legislature ever intended to allow a double recovery system, it never expressly provided the language necessary for such an interpretation, but also noted that the language of 61-6-103 does not expressly prohibit double recovery. Rather, the clear statutory language provides that an owner's policy must provide a base amount of coverage, subject to limits exclusive of interest and costs, with respect to each motor vehicle, not each insured, in the event that the vehicle causes damage to persons or property, regardless of who is behind the wheel. The legislative history provided no evidence that the Legislature ever contemplated or wished to require that the minimum amounts of liability could or should be increased depending on the number of insureds found liable for causing one accident, and the Supreme Court, declining to construe the statute in any way that would insert a particular and precise meaning that had been omitted, affirmed the District Court's conclusion that the insurer was obligated under these circumstances to pay the policy limit on behalf of its insureds, and no more. Infinity Ins. Co. v. Dodson, 2000 MT 287, 302 M 209, 14 P3d 487, 57 St. Rep. 1196 (2000).

Motor Vehicle Liability Policy Language Not Ambiguous in Failing to Define "Accident" — Maximum Coverage in Accident Involving Multiple Liable Insureds: Appellants argued that an insured's policy was ambiguous in that it did not define the word "accident", contending that alleged negligent driving that caused a rollover accident and another person's alleged negligence in permitting the driver to use the vehicle constituted two separate accidents under the policy, giving rise to separate coverage, each with a $50,000 limit. The policy provided that regardless of the number of insured vehicles, insured persons, claims or policies, or vehicles involved in the accident, the insurer would pay no more than the limit of liability for each person injured in any one accident. The District Court concluded, and the Supreme Court agreed, that under the terms of the policy, the maximum amount paid by the insurer remained constant and the fact that an accident involved multiple liable insureds was inconsequential. Although "accident" was not defined, a reasonable person in the position of an insured would understand that the word refers to a singular event in which bodily injury or property damage results from the ownership, maintenance, or use of a vehicle. There was only one accident, and the District Court correctly concluded that although more than one act of negligence may have contributed, the maximum amount of coverage under the policy remained constant. Infinity Ins. Co. v. Dodson, 2000 MT 287, 302 M 209, 14 P3d 487, 57 St. Rep. 1196 (2000).

Doctrine of Reasonable Expectations Inapplicable When Policy Language Excludes Coverage — Liability Coverage on Borrowed Horse Trailer Limited to Policy Terms: Babcock borrowed a horse trailer from her neighbor, and even though the trailer ball on Babcock's truck was too small for the trailer hitch, she attempted to tow the trailer anyway. The trailer came unhooked, left the road, and struck a fence. Farmers Insurance Exchange (Farmers) paid Babcock the full cost of the fence repair. Babcock requested that Farmers also pay for damages to the trailer. Farmers paid $500 toward the trailer, which constituted Babcock's policy limit for collision and comprehensive coverage. Babcock sued, claiming that Farmers was required to pay for the trailer damage under the liability coverage. The District Court granted summary judgment for Farmers, concluding that the plain policy language limited coverage to $500. Babcock appealed, asserting that the policy language was ambiguous but nevertheless created a reasonable expectation that a trailer was covered and that the exclusion for damage "to property owned or being transported by an insured person" did not apply because the trailer was not being "transported" when it was damaged, having separated from the truck. Farmers argued that, under Babcock's interpretation, a passenger ejected from a car would have no claim for medical payments because the passenger did not "occupy" the vehicle at the time of injury. The Supreme Court agreed. The doctrine of reasonable expectations does not apply to create coverage when the terms of the policy clearly demonstrate an intent to exclude particular coverage. In this case, the policy language clearly excluded liability coverage for the borrowed trailer because it was in Babcock's charge and she was transporting it at the time of the accident. Babcock v. Farmers Ins. Exch., 2000 MT 114, 299 M 407, 999 P2d 347, 57 St. Rep. 479 (2000).

Question of Fault and Question of Entitlement to Collect Damages Separate: Dill suffered damages after being hit as a pedestrian by a vehicle operated by Jardine. State Farm Mutual Automobile Insurance Company (State Farm) provided both liability insurance for Jardine and underinsured motorist coverage for Dill. Meeting all the conditions precedent in the policy, Dill recovered the maximum policy amount from Jardine pursuant to Jardine's policy, then, consistent with the general release executed on Dill's behalf in settling with Jardine, Dill demanded underinsured motorist benefits under Dill's policy, which State Farm refused to pay. The District Court held that Dill's claim against State Farm would not be ripe for adjudication until after Jardine's fault was established and damages assessed in a negligence action. However, the question of whether anyone was at fault and the question of whether an insured is legally entitled to collect damages from an underinsured driver are not the same. A person can be legally entitled to collect damages without first proving fault in court, as Dill did here; conversely, an insured might prove fault on the part of the defendant and yet not be entitled to collect damages. Once an insured demonstrates a legal entitlement to damages, principles of contract law define the coverage afforded by an underinsured motorist policy; tort law is relevant only as far as fault is concerned. Under a writ of supervisory control, the Supreme Court looked to the clear language of the policy and found no issues of fault for a factfinder to resolve. The only questions remaining were whether Dill was legally entitled to collect damages and, if so, in what amount. Regardless of whether anyone was at fault, having already received money from State Farm, Dill was obviously legally entitled to receive damages. Thus, the case was reversed for a trial to determine the amount of damages, if any, that Dill was entitled to under the underinsured motorist policy. Dill v. District Court, 1999 MT 85, 294 M 134, 979 P2d 188, 56 St. Rep. 350 (1999).

"No Prejudice" Rule Adopted in Montana With Respect to Underinsured Motorist Insurance Coverage: Sorensen was injured in a two-vehicle accident and, after settling with the liability carrier for the other driver, also tried to recover damages under the underinsured coverage with her own carrier. The District Court held that she was precluded from recovering under her own policy because she had settled with the other driver without informing her insurer, thereby prejudicing the insurer's subrogation rights and violating the terms of the insurance contract. The Supreme Court held that it was adopting the "no prejudice" rule with respect to underinsured motorist coverage, meaning that an insurer has the burden to prove that it was prejudiced by the settlement of the tort claim in order to rely on the subrogation provisions of the policy. The Supreme Court reversed the lower court on the basis that the evidence presented in the lower court showed that the other driver was "judgment proof" and therefore the insurer could not have been prejudiced by Sorensen's entering into a settlement. Sorensen v. Farmers Ins. Exch., 279 M 291, 927 P2d 1002, 53 St. Rep. 1155 (1996), followed in Augustine v. Simonson, 283 M 259, 940 P2d 116, 54 St. Rep. 589 (1997).

No Implied Permission by Insured for Son to Drive Another's Automobile — Insurer Not Liable: When the insured stated in his affidavit that he did not and would not have given his son permission to drive another's automobile on the day in question and when the son stated in his affidavit that he believed his father would have denied him permission to drive the vehicle on that day, the District Court did not err in determining that there was no express or implied permission by the insured for his son to drive the vehicle. The District Court did not err in granting summary judgment for the insurer. Allstate Ins. Co. v. Hankinson, 249 M 237, 815 P2d 145, 48 St. Rep. 662 (1991).

Pro Rata Clause — Excess Coverage Clause — Effect: An insurance policy that provided excess coverage did not constitute "other insurance" within the meaning of a pro rata clause. In an action for contribution involving a residence destroyed by fire, the home owner's pro rata policy provided primary coverage and the bank lender's excess coverage policy provided only excess coverage. The home owner's carrier was not entitled to contribution from the bank's carrier. Mtn. W. Farm Bureau Mut. Ins. Co. v. Credit Gen. Ins. Co., 247 M 161, 805 P2d 569, 48 St. Rep. 138 (1991).

Dismissal Proper — Suit Filed Prior to Compliance With Policy Terms: The plaintiffs' insurance policy contained a clause that required implementing an appraisal procedure if the parties could not agree on the amount of loss. The policy also stated that no legal action could be initiated until there was full compliance with the terms of the policy. The insurer invoked the appraisal clause, but the plaintiffs refused to submit to the procedure and instead filed suit for damages and bad faith against the insurer. The Supreme Court held that summary judgment in favor of the insurer was appropriate in light of the clear language of the policy, and the court further held that the terms of the policy were a negative defense and did not have to be affirmatively set out in the defendants' answer. Dunn v. Way, 241 M 208, 786 P2d 649, 47 St. Rep. 213 (1990).

Additional Omnibus Insured — Tort Claims Act Not Shield — Employer's Insurance Secondary: When an employee of Butte-Silver Bow was involved in an auto accident while acting in the course and scope of his employment and driving his own car, Butte-Silver Bow was an additional omnibus insured under the employee's auto policy. The employee's personal insurance carrier was not shielded from liability by the state tort claims act. The employee's insurer was the primary insurer, and Butte-Silver Bow's insurer was the excess insurer. Guar. Nat'l Ins. Co. v. State Farm Ins. Co., 238 M 324, 777 P2d 353, 46 St. Rep. 1303 (1989).

Settlement by Secondary Carrier Binding on Primary Carrier: Secondary carrier had a fiduciary duty to settle the case. When primary carrier was aware of the settlement negotiations, the secondary carrier will not be considered a volunteer and is entitled to indemnification and subrogation by the primary insurer. Guar. Nat'l Ins. Co. v. State Farm Ins. Co., 238 M 324, 777 P2d 353, 46 St. Rep. 1303 (1989).

Award of Attorney Fees in Declaratory Judgment Insurance Action — Distinction Between Third-Party Claimant and Insured: As a general rule, an insured is not entitled to recover attorney fees and expenses incurred in defending a declaratory judgment action brought by an insurer to determine the existence of coverage under a liability insurance policy. However, recovery is appropriate where it is ultimately determined by the court that the insurer was not acting in good faith in contesting coverage and instituting declaratory judgment proceedings. A third-party claimant is not entitled to recover attorney fees incurred in a declaratory judgment proceeding, even if the claimant arguably falls within the policy definition of "insured". Iowa Mut. Ins. Co. v. Davis, 689 F. Supp. 1028, 45 St. Rep. 1361 (D.C. Mont. 1988).

Determination of Vehicle Ownership — Installment Sales Contract Not Indicative of Ownership for Insurance Purposes: Jordet, an adult, jointly purchased a vehicle for the exclusive use of his minor sister-in-law, who made the downpayment, repaid registration and license fees, made the only installment payment, purchased separate insurance, possessed the only keys, and maintained sole use and control of the vehicle. The District Court decided that the term "owned vehicle" in Jordet's automobile policy included the jointly owned vehicle and that Jordet's signature on the installment sales contract conclusively placed the vehicle under his policy. The Supreme Court reversed, noting that the purchase of property and the insurance of property are distinct transactions and that Jordet's signature on the sales contract did not establish ownership for insurance purposes. Implicit in ownership is the ability to control how, when, where, and by whom the property will be used. Since Jordet never exercised any of the indicia of ownership that would be compatible with his insuring the vehicle, it was not an "owned vehicle" under the terms of his policy. Truck Ins. Exch. v. Nelson, 228 M 233, 743 P2d 572, 44 St. Rep. 1482 (1987).

Ambiguous Insurance Policy Provision — Summary Judgment Reversed: An insurance policy that did not clearly state whether it provided uninsured motor vehicle coverage when the driver was insured but the ownership of the vehicle was not was held to be ambiguous; therefore, under the rationale that an ambiguous provision is construed against the insurance company, the policy was interpreted to provide coverage. The District Court grant of summary judgment holding that the policy did not provide uninsured motor vehicle coverage was reversed. St. Farm Mut. Auto. Ins. Co. v. Taylor, 223 M 215, 725 P2d 821, 43 St. Rep. 1667 (1986), distinguished in Meyer v. St. Farm Mut. Auto. Ins. Co, 2000 MT 323, 303 M 1, 15 P3d 899, 57 St. Rep. 1363 (2000).

Invalidity of No-Consent-to-Settlement Clause: A no-consent-to-settlement clause in an insurance policy, disallowing coverage if the insured settled with any person or organization who may have been liable for the bodily injury without obtaining written consent of the insurance company, was held to be void because enforcement of the clause would result in a backing away from the mandatory offering requirement of 33-23-201 and would place control of efforts to collect from the responsible party in the hands of the insurer. While not denying the insurer's right to subrogation, the court would not allow the right to subrogation to negate the required offering of uninsured motor vehicle coverage. St. Farm Mut. Auto. Ins. Co. v. Taylor, 223 M 215, 725 P2d 821, 43 St. Rep. 1667 (1986).

Construction of Exclusionary Clause — Findings Not Clearly Erroneous: District Court determined that arrangement by which insured purchased truck for use of son-in-law in exchange for free hauling of insured's hay and cattle was on a share expense basis, and as such not excluded from coverage under insurance policy provision that excluded coverage for lease or rental. Supreme Court affirmed District Court judgment and held that the policy clause was ambiguous, capable of at least two interpretations, and as such capable of construction against the insurance company. The District Court findings were not clearly erroneous and therefore must be sustained. Bauer Ranch, Inc. v. Mtn. W. Farm Bureau Mut. Ins. Co., 215 M 153, 695 P2d 1307, 42 St. Rep. 255 (1985), followed in Dagel v. Farmers Ins. Group, 273 M 402, 903 P2d 1359, 52 St. Rep. 1023 (1995).

Liability Dispute Between Insurers — Costs and Fees: In a proceeding that was essentially between two insurers to determine which of two overlapping policies covered auto accident, the winner was not entitled to costs and attorney fees. Bill Atkin Volkswagen, Inc. v. McClafferty, 213 M 99, 689 P2d 1237, 41 St. Rep. 1981 (1984).

Pro Rata Coverage When Two Insurers Liable — Excess Coverage Clauses — Effect: Driver left his car at dealer's for repair, and while driving a car dealer had loaned driver, he hit a parked car. Driver admitted fault, tendered defense of a suit by damaged car's owner against driver to dealer's insurer, and coverage was denied. Driver's insurer settled the claim. Dealer's insurer partially reimbursed dealer for damage to the loaned vehicle. Dealer sued driver on its insurer's behalf for damage to the loaned vehicle, and driver sued dealer's insurer as a third-party defendant claiming to be insured under dealer's policy. Driver sought, on behalf of his insurer, recovery of the amount paid by driver's insurer to settle the claim of the owner of the parked car and also sought attorney fees and costs. Both the dealer and the driver had a policy stating that it provided only excess insurance over and above any other valid and collectible insurance applicable to a particular event. Each insurer therefore argued that the other insurer was the primary insurer and must pay until the limits of the primary insurer were reached, at which time the excess policy would operate to pay up to its limits. The court held that in such an instance each insurer is liable for a pro rata share of the loss, calculated on the basis of the ratio of the insurer's policy limit to the total of both insurers' policy limits. Bill Atkin Volkswagen, Inc. v. McClafferty, 213 M 99, 689 P2d 1237, 41 St. Rep. 1981 (1984).

Required Insurance — Necessity of Primary Coverage — Excess Coverage Clause Often Adequate: That a policy is procured to satisfy the requirements of a motor vehicle financial responsibility or mandatory liability protection law does not require that policy to provide primary coverage in all events. Between that policy and another policy applicable to a particular event, an excess coverage provision will be given effect. The excess coverage clause does not defeat the purpose of the law, because it provides coverage unless there is other adequate coverage. The loss is thus covered in any event. Moreover, the Montana law simply does not specify that the vehicle owner's insurer is the primary insurer as a matter of law. Bill Atkin Volkswagen, Inc. v. McClafferty, 213 M 99, 689 P2d 1237, 41 St. Rep. 1981 (1984).

Contract Language Not Preventing Payment of Punitive Damage Award — No Public Policy Against Payment: Following the award of general, special, and punitive damages to the plaintiff for injuries suffered in a car accident, the insurance company refused to pay the punitive damages, whereupon the plaintiff sued the insurance company. On appeal from a summary judgment for the plaintiff, the Supreme Court held that the language in the insurance policy relied on by the company to deny the payment of punitive damages was ambiguous and should be construed against the company to allow payment of those damages. The court also held, under the rationale of First Bank (N.A.) Billings v. Transamerica Ins. Co., 209 M 93, 679 P2d 1217, 41 St. Rep. 573 (1984), that there was no public policy against the payment of punitive damages by an insurance company. Fitzgerald v. W. Fire Ins. Co., 209 M 213, 679 P2d 790, 41 St. Rep. 654 (1984).

Overlapping Coverage for Concurrent Causes: When the negligent operation of a Pierce Packing Company garbage truck damaged a stored transformer, causing PCBs to leak from the transformer and contaminate Pierce's feed products, both Pierce's primary and excess liability insurance carriers were liable for the maximum limits under both the general liability and automobile coverage provisions of their policies. Ambiguity in the contracts as to coverage or limits is to be construed against the insurers. Unigard Mut. Ins. Co. v. Abbott, 732 F2d 1414 (9th Cir. 1984).

Partnership — Coverage of Individual Partners' Automobile: When policy extended liability coverage to any automobile owned by the named insured, which was the partnership, without any limitations to vehicles listed on the policy and when endorsement extending coverage to the individual partners provided that coverage for them would be the same as for the partnership, the policy provided coverage to the automobile owned by one of the partners but not listed on the policy. USF&G v. Newman, 656 F2d 457 (9th Cir. 1981).

Oral Contract for Insurance: Since there was no evidence that an automobile insurance agent and his prospective client were dealing for temporary insurance, the case must be judged, not as a possible oral binder, but as one involving a regular insurance policy. Assuming, without deciding, that there may be an oral insurance policy in Montana, it is required by case law that an oral contract must contain the essential elements of a contract. There was no meeting of minds in this case. St. Farm Mut. Auto. Ins. Co. v. Lee, 35 St. Rep. 1508 (D.C. Mont. 1978) (apparently not reported in Federal Supplement).

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Near end of (1) substituted "the ownership, the maintenance, or the use of which is not insured" for "neither the ownership, nor the maintenance, nor the use of which is insured".

1987 Amendment: In (1), after "No", deleted "automobile liability or"; at end of (1), after "therefrom", inserted remainder of sentence, referring to operation or use of vehicle, and last sentence defining uninsured motor vehicle; and made minor changes in phraseology.

Case Notes

Uninsured Motorist Coverage — Generally 563
Uninsured Motorist Coverage — "Stacking" Coverage 569

UNINSURED MOTORIST COVERAGE — GENERALLY

Issue Preclusion and Claim Preclusion Inapplicable — Tort Claim in Motor Vehicle Accident Not Identical to Underinsured Motorist Contract Claim Against Insurer: The plaintiff recovered damages arising from injuries sustained in an automobile accident from the insurance company of the person that hit him in the full amount of the policy limit. The plaintiff also filed a separate underinsured motorist claim against his own insurance company. The plaintiff's insurance company, as the defendant in the second court action, moved for summary judgment, arguing that the underinsured motorist claim was barred by the doctrines of issue preclusion and claim preclusion because the plaintiff had recovered damages from another party. The District Court affirmed the motion and the Supreme Court reversed, holding that the defendant's underinsured motorist claim was not barred by either the doctrine of issue preclusion or claim preclusion. The related common-law doctrines of issue preclusion and claim preclusion, also known as collateral estoppel and res judicata, respectively, exist to preclude future litigation of a final judgment. Issue preclusion bars the same parties or their privies from relitigating issues in a second suit that is based on a "different cause of action". Claim preclusion bars a second suit involving the same parties or their privies based on the "same cause of action". The defendant's issue preclusion and claim preclusion arguments failed, because the personal injury issue decided in the prior adjudication was not identical to the contractual issue in the underinsured motorist claim. Reisbeck v. Farmers Ins. Exch., 2020 MT 171, 400 Mont. 345, 467 P.3d 557.

Underinsured Motorist Claim — Verdict for Insured in Excess of Insurer's Last Offer — Recovery of Reasonable Attorney Fees — Extension of Insurance Exception to American Rule: When a first-party insured is compelled to pursue litigation and a jury returns a verdict in excess of the insurer's last offer to settle an underinsured motorist claim, the insurer must pay the first-party insured's attorney fees in an amount subsequently determined by the District Court to be reasonable. In addition, if a first-party insured goes to trial and obtains a verdict in excess of the insurer's last offer, it is prima facie proof that the insured was forced to assume the burden of legal action to obtain the full benefit of the policy, but if the policy limits are tendered prior to a verdict, the District Court may consider to what extent the insured assumed the burden of legal action to recover the full benefits of the insurance contract. Mlekush v. Farmers Ins. Exch., 2017 MT 256, 389 Mont. 99, 404 P.3d 704. See also King v. St. Farm Mut. Auto. Ins. Co., 2019 MT 208, 397 Mont. 126, 447 P.3d 1043, in which the Supreme Court extended its holding in the Mlekush cases to provide that the insurance exception to the American rule allows an insured to recover both taxable and nontaxable costs from an insurer.

Insurance Contract Choice of Law Provision — Montana Law Incorrectly Applied to Nevada Policy: The District Court conducted a conflict of law analysis and concluded that Montana law governed Tenas's entitlement to damages for an accident that occurred in Montana under a personal auto policy that Tenas's mother obtained in Nevada. On appeal, the Supreme Court reversed. Nevada was determined to have a materially greater interest than Montana based on the fact that: (1) Nevada was the place of contracting; (2) although Montana represented a place of performance under the policy, place of performance weighed heavily toward Nevada because Tenas and her mother were mere visitors to Montana; (3) Tenas and her mother resided in Nevada, so that state had a greater interest regarding domicile, residence, nationality, place of incorporation, and place of business of the parties; and (4) a policy choice of law provision required application of Nevada law to resolve any disputes. Given Nevada's greater interest, the District Court improperly applied Montana law to the dispute. Tenas v. Progressive Preferred Ins. Co., 2008 MT 393, 347 M 133, 197 P3d 990 (2008). See also Casarotto v. Lombardi, 268 M 369, 886 P2d 931, 51 St. Rep. 1350 (1994), Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003), Wamsley v. Nodak Mut. Ins. Co., 2008 MT 56, 341 M 467, 178 P3d 102 (2008), and Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008).

Farmowners Policy Construed to Cover Individuals, Not Partnership: Modroo's daughter was killed in an auto accident, and Modroo sought coverage under a farmowners policy that listed Modroo (and by definition Modroo's family members) as insureds. The insurer asserted that the policy was for the family farming partnership and covered only insureds who were driving a vehicle insured under the policy, which the daughter was not. The District Court agreed and held that the policy did not cover Modroo individually or family members. On appeal, the Supreme Court determined that the insurer's interpretation was reasonable but was not the only interpretation. Another reasonable interpretation was that the policy granted Modroo coverage as an individual because the named insured block on the form listed Modroo, not the partnership. If the insurer intended to cover only the partnership, that entity could have been listed as the named insured, but no reason existed for the insurer to list individuals as insureds unless it intended coverage to apply to them. Construing the ambiguity against the insurer, the policy was held to cover Modroo individually, and the daughter as a family member as well. Modroo was entitled to medical payments under the farmowners policy and the District Court decision was reversed. Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008). See also Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003).

Ohio Law Applied to Disallow Stacking of Coverages — Offsets Allowed: The District Court conducted a conflict of law analysis and concluded that Ohio law governed Modroo's entitlement to damages for an accident that occurred in Montana under a personal auto policy that Modroo obtained in Ohio. Under Ohio law, stacking of policy coverages is disallowed and offsets are allowed. Citing Csulik v. Nationwide Mut. Ins. Co., 723 NE 2d 90 (Ohio 2000), Modroo contended that the policy's multiple choice-of-law provisions resulted in ambiguity and that Montana law should have applied because it is more favorable to the insured. The Supreme Court disagreed and noted that although the policy provided for payment of compensatory damages under Montana tort law while also providing that Ohio law governed interpretation of the contract, the presence of two choice-of-law provisions did not necessarily create an ambiguity. The issue of stacking policies was a question of contract law rather than tort law, so the Ohio law applied. Likewise, the provisions in the policy that any amounts available under uninsured motorist coverage would be offset by any amounts available for payment by or on behalf of any liable parties also presented a question of contract law, so Ohio law applied to that issue as well. The Supreme Court declined to overrule its choice of law principles. The District Court did not err in applying Ohio law to the stacking and offset issues. Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008). The Modroo choice of law rationale was also applied in Tucker v. Farmers Ins. Exch., 2009 MT 247, 351 M 448, 215 P3d 1 (2009). In Tidyman's Management Serv. v. Davis, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135, the Supreme Court overruled Tucker to the extent it suggested that the "materially greater interest" factors supplant the rule from Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 Mont. 281, 68 P.3d 703, when an insurance contract does not contain a choice-of-law provision.

Retroactive Applicability of Decision Prohibiting Antistacking of Insurance Provisions to Pending Cases: In Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003), the Supreme Court decided that antistacking provisions in an underinsured motorist policy were unconstitutional. Plaintiffs brought a class action in federal court claiming that Hardy entitled them to additional payments from past insurance claims that were not previously allowed because their policies did not allow for stacking. The federal court certified the question to the Supreme Court as to whether Hardy applied prospectively only or retroactively to qualified claims arising before the Hardy decision. The Supreme Court agreed with the decision in Harper v. Va. Dept. of Taxation, 509 US 86 (1993), that limiting a rule of law to its prospective application creates an arbitrary distinction between litigants based merely on the timing of their claims and that in the interests of fairness and finality, the line should be drawn between claims that are final and claims that are not. The Supreme Court then decided that the retroactivity test in Chevron Oil Co. v. Huson, 404 US 97 (1971), still applies to Montana civil decisions if all three Chevron factors are met: (1) the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed; (2) the court must weigh the merits and demerits in each case by looking at the prior history of the rule in question, its purpose and effect, and whether retroactive application will further or retard its operation; and (3) the inequity imposed by retroactive application has been weighed. However, the retroactive effect of a decision does not apply to cases that became final or that were settled prior to a decision's issuance. Thus, Hardy applies retroactively in qualifying circumstances on open claims arising before its issuance and is limited to cases pending on direct appeal or not yet final. Dempsey v. Allstate Ins. Co., 2004 MT 391, 325 M 207, 104 P3d 483 (2004). See also LaMere v. Farmers Ins. Exch., 2011 MT 272, 362 Mont. 379, 265 P.3d 617, holding that under Dempsey, a settled case is considered final.

Bodily Injury Not Inclusive of Emotional or Psychological Injury Within Terms of Uninsured Motorist Policy: Jacobsen was driving a car insured by defendant when he stopped to assist another motorist who was unconscious with a bleeding head wound. Despite Jacobsen's ministrations, the motorist died a few days later, and the cause was determined to be suicide. The next year, Jacobsen began seeking treatment for emotional distress suffered as a result of the incident and filed a claim with defendant to recover uninsured motorist benefits and medical pay benefits. The District Court granted summary judgment for defendant, and Jacobsen appealed on grounds that his policy for uninsured motorist coverage included damages for bodily injury sustained by the insured caused by an accident. The Supreme Court held that the term "bodily injury" was not ambiguous and was limited to physical injury caused by an accident but did not include emotional or psychological injuries. Thus, Jacobsen's emotional injury, including resulting physical manifestations, did not constitute bodily injury as defined in the insurance contract and was not compensable. Jacobsen v. Farmers Union Mut. Ins. Co., 2004 MT 72, 320 M 375, 87 P3d 995 (2004), following Bain v. Gleason, 223 M 442, 726 P2d 1153 (1986), and Aetna Life & Cas. Co. v. First Sec. Bank of Bozeman, 662 F. Supp. 1126 (D.C. Mont. 1987). Jacobsen was overruled in Allstate Ins. Co. v. Wagner-Ellsworth, 2008 MT 240, 344 M 445, 188 P3d 1042 (2008), to the extent that bodily injuries include mental or psychological injuries that are accompanied by physical manifestations.

No Recovery of Wrongful Death Stipulated Judgment From Employer's Insurer — Workers' Compensation Act Exclusive Remedy: Plaintiff's wife was killed in an automobile accident in the course of her employment, striking a vehicle driven by a coemployee of the same employer. Plaintiff received workers' compensation benefits under the employer's coverage. The employer settled for $1,250,000 in a stipulated judgment, which included $500,000 for wrongful death. Plaintiff then sued the employer's insurer to collect the $500,000 wrongful death judgment under an uninsured motorist policy. The District Court granted summary judgment to the insurer, holding that plaintiff could not recover a stipulated judgment from the insurer because plaintiff's exclusive remedy was under the Workers' Compensation Act. On appeal, plaintiff asserted that Sullivan v. Doe, 159 M 50, 495 P2d 193 (1972), precluded the offset of uninsured motorist benefits by workers' compensation benefits. The Supreme Court applied Hubbel v. W. Fire Ins. Co., 218 M 21, 706 P2d 111 (1985), and affirmed. To recover under this section, two conditions must be met: (1) a claimant must be legally entitled to recover damages from the owner or operator of the uninsured vehicle; and (2) the driver of the vehicle must be uninsured. Under 39-71-411, an employer is not liable for the death of an employee covered by the Workers' Compensation Act, so plaintiff was barred from recovering from the coemployee and the employer. Because plaintiff was not legally entitled to recover damages under this section, plaintiff's exclusive remedy was under the Worker's Compensation Act, and recovery was limited to damages received under the Act. Okuly v. USF&G Ins. Co., 2003 MT 291, 318 M 88, 78 P3d 877 (2003).

Underinsured Motorist Coverage Included With Uninsured Motorist Coverage — Reasonable Consumer Expectation of Additional Coverage: Rather than paying a separate premium for independent underinsured motorist coverage, Mitchell's underinsured motorist coverage was part of the uninsured motorist coverage, no separate premium was paid for the underinsured coverage, and the declarations pages did not list underinsured motorist coverage separately. Nevertheless, Mitchell was still entitled to a reasonable expectation that the underinsured motorist coverage provided additional coverage. As in Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003), the underinsured motorist definition in Mitchell's policy contravened that expectation and thus violated Montana's public policy. Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003).

Offset Provision in Underinsured Motorist Policy Violative of State Policy — Antistacking Provisions Unconstitutional: Hardy paid separate premiums for underinsured motorist (UIM) coverage of $50,000 a person and $100,000 an accident for each of three vehicles. Hardy was injured when the vehicle that he was riding in was negligently struck by another car. Hardy recovered $50,000 from the other driver's liability insurer, but that amount was insufficient to cover Hardy's injuries, so Hardy sought compensation pursuant to the UIM coverage on his vehicles. Hardy believed that the policies could be stacked to aggregate $150,000 of UIM coverage. Defendant insurance company denied coverage, and Hardy sued in federal District Court. The insurer raised three arguments in its defense, contending that: (1) the tortfeasor's vehicle was not underinsured, as defined in the policy, because the total liability coverage for the tortfeasor's vehicle was equal to the highest single UIM coverage limit in Hardy's policy; (2) the policy required Hardy's UIM coverage for one vehicle to be offset by all amounts recovered from the tortfeasor; and (3) Hardy's UIM coverages could not be stacked or aggregated for purposes of either comparing limits or affording $150,000 of UIM coverage. The federal District Court certified the three questions to the Montana Supreme Court, which determined that the UIM definition and offset clause in Hardy's policy violated Hardy's reasonable expectation of coverage when a tortfeasor's insurance provided inadequate indemnity. The policy declarations page suggested coverage in an amount that was actually not available; therefore, the terms of the UIM coverage were ambiguous in violation of Montana public policy and rendered the coverage that the insurer promised to provide illusory. Further, the provisions of 33-23-203 that allow insurers to charge premiums for nonexistent coverage are not rationally related to the objective of maintaining affordable insurance in Montana and constitute an arbitrary and capricious legislative action that is unconstitutionally violative of due process. A Montanan should reasonably expect coverage up to the aggregate limits of separate policies when a separate premium for UIM coverage was charged for each policy. Antistacking provisions that allow an insurer to receive valuable consideration for coverage that is not provided are against public policy. Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003), followed in Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003), and distinguished in Parish v. Morris, 2012 MT 116, 365 Mont. 171, 278 P.3d 1015. The Hardy decision was applied retroactively to open claims arising before its issuance and was limited to cases pending on direct appeal or not yet final in Dempsey v. Allstate Ins. Co., 2004 MT 391, 325 M 207, 104 P3d 483 (2004), which was followed in LaMere v. Farmers Ins. Exch., 2011 MT 272, 362 Mont. 379, 265 P.3d 617, holding that under Dempsey, a settled case is considered final. See also Chaffee v. USF&G Co., 181 M 1, 591 P2d 1102 (1979), and Bennett v. St. Farm Mut. Auto. Ins. Co., 261 M 386, 862 P2d 1146 (1993).

Government-Owned Exclusion in Insurance Policy Impermissibly Restrictive of Mandatory Uninsured Vehicle Coverage: The Supreme Court received a certified question from federal District Court as to whether a provision in defendant's uninsured vehicle insurance policy excluding coverage on any government-owned vehicle or equipment was violative of this section, Montana's mandatory uninsured vehicle coverage statute. The Supreme Court held that this section does not specifically exclude any class of vehicle, so the government-owned exclusion impermissibly restricted the broad and mandatory coverage required by the statute and was repugnant to the clear public policy in Montana in favor of uninsured motorist coverage and against any limitations upon complete protection. Therefore, any automobile policy issued in Montana with respect to a motor vehicle registered and maintained in Montana that provides that a vehicle or equipment owned by a governmental unit or agency may not be an uninsured vehicle violates this section and the public policy of this state. Bartell v. Am. Home Assurance Co., 2002 MT 145, 310 M 276, 49 P3d 623 (2002).

Question of Fault and Question of Entitlement to Collect Damages Separate: Dill suffered damages after being hit as a pedestrian by a vehicle operated by Jardine. State Farm Mutual Automobile Insurance Company (State Farm) provided both liability insurance for Jardine and underinsured motorist coverage for Dill. Meeting all the conditions precedent in the policy, Dill recovered the maximum policy amount from Jardine pursuant to Jardine's policy, then, consistent with the general release executed on Dill's behalf in settling with Jardine, Dill demanded underinsured motorist benefits under Dill's policy, which State Farm refused to pay. The District Court held that Dill's claim against State Farm would not be ripe for adjudication until after Jardine's fault was established and damages assessed in a negligence action. However, the question of whether anyone was at fault and the question of whether an insured is legally entitled to collect damages from an underinsured driver are not the same. A person can be legally entitled to collect damages without first proving fault in court, as Dill did here; conversely, an insured might prove fault on the part of the defendant and yet not be entitled to collect damages. Once an insured demonstrates a legal entitlement to damages, principles of contract law define the coverage afforded by an underinsured motorist policy; tort law is relevant only as far as fault is concerned. Under a writ of supervisory control, the Supreme Court looked to the clear language of the policy and found no issues of fault for a factfinder to resolve. The only questions remaining were whether Dill was legally entitled to collect damages and, if so, in what amount. Regardless of whether anyone was at fault, having already received money from State Farm, Dill was obviously legally entitled to receive damages. Thus, the case was reversed for a trial to determine the amount of damages, if any, that Dill was entitled to under the underinsured motorist policy. Dill v. District Court, 1999 MT 85, 294 M 134, 979 P2d 188, 56 St. Rep. 350 (1999).

"Arising Out of the Use of" Construed in Context of Uninsured Motorist Law: For purposes of uninsured motorist coverage, an insured's injuries arise out of the use of an uninsured vehicle if the injuries originate from, grow out of, or flow from the use of the uninsured vehicle. The phrase should be broadly interpreted to effect the remedial purposes of the uninsured motorist law. Wendell v. St. Farm Mut. Auto. Ins. Co., 1999 MT 17, 293 M 140, 974 P2d 623, 56 St. Rep. 73 (1999), following Ins. Co. of N. Am. v. Dorris, 288 SE 2d 856 (Ga. App. Ct. 1982), and Ulrich v. United Serv. Auto. Ass'n, 839 P2d 942 (Wyo. 1992), and followed, with regard to the use of the phrase in a commercial general liability insurance policy, in Pablo v. Moore, 2000 MT 48, 298 M 393, 995 P2d 460, 57 St. Rep. 231 (2000). See also Akerley v. Hartford Ins. Group, 616 A2d 511 (N.H. 1992), and Cannon v. Maine Bonding & Cas. Co., 639 A2d 270 (N.H. 1994).

Intentional Assault Considered Accident in Context of Uninsured Motorist Law: Wendell was assaulted by a group of people after they followed him in a car, he stopped, and they approached his car. Wendell's uninsured motorist claim was denied because his injuries were not caused by an accident involving the vehicle. Neither the uninsured motorist law nor the uninsured motorist provision at issue defined "accident" or excluded from coverage injuries caused by intentional, as opposed to negligent, acts of the insured. Because the term was subject to more than one interpretation, it was considered ambiguous. The question of ambiguity in insurance contract language is examined from the viewpoint of a consumer with average intelligence who is not trained in law or the insurance business. The average insured reasonably expects that as long as an injury-producing event is unforeseen and unprovoked by the insured, injuries caused by uninsured motorists will be covered by uninsured motorist coverage regardless of whether they were caused negligently or intentionally. Absent contract language to the contrary, an intentional act may be considered an accident for purposes of uninsured motorist coverage. Thus, in this case, an intentional assault on Wendell, viewed from his standpoint as the insured, was an accident and was subject to coverage. Wendell v. St. Farm Mut. Auto. Ins. Co., 1999 MT 17, 293 M 140, 974 P2d 623, 56 St. Rep. 73 (1999).

"No Prejudice" Rule Adopted in Montana With Respect to Underinsured Motorist Insurance Coverage: Sorensen was injured in a two-vehicle accident and, after settling with the liability carrier for the other driver, also tried to recover damages under the underinsured coverage with her own carrier. The District Court held that she was precluded from recovering under her own policy because she had settled with the other driver without informing her insurer, thereby prejudicing the insurer's subrogation rights and violating the terms of the insurance contract. The Supreme Court held that it was adopting the "no prejudice" rule with respect to underinsured motorist coverage, meaning that an insurer has the burden to prove that it was prejudiced by the settlement of the tort claim in order to rely on the subrogation provisions of the policy. The Supreme Court reversed the lower court on the basis that the evidence presented in the lower court showed that the other driver was "judgment proof" and therefore the insurer could not have been prejudiced by Sorensen's entering into a settlement. Sorensen v. Farmers Ins. Exch., 279 M 291, 927 P2d 1002, 53 St. Rep. 1155 (1996), followed in Augustine v. Simonson, 283 M 259, 940 P2d 116, 54 St. Rep. 589 (1997).

Required Coverages: Under Montana's statutory scheme, the minimum third-party liability coverages under 61-6-103 and the minimum first-party uninsured motorist coverage under this section are required coverages. Farmers Alliance Mut. Ins. Co. v. Holeman, 278 M 274, 924 P2d 1315, 53 St. Rep. 904 (1996), distinguishing Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347 (1991). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Use of Insured Vehicle by Uninsured Driver — Denial of Coverage by Insurer — Uninsured Motorist Coverage Applicable: Sobieck crashed a car belonging to her boyfriend that was insured by Employers Mutual. Nimmick was a passenger and was injured. Nimmick's parents were insured by State Farm at the time of the accident, and the policy defined an uninsured motor vehicle as one uninsured as to its ownership, maintenance, or use and the ownership, maintenance, or use of which is insured or bonded for bodily injury liability at the time of the accident but the insuring company denies coverage or is or becomes insolvent. Employers Mutual initially denied coverage of Sobieck's use of the vehicle; therefore, in regard to any claim against Sobieck, the vehicle was uninsured under the State Farm policy. Even though ownership of the vehicle was insured, the vehicle was uninsured pursuant to Nimmick's policy if Sobieck's use of the vehicle was not insured. Nimmick v. St. Farm Mut. Auto. Ins. Co., 270 M 315, 891 P2d 1154, 52 St. Rep. 208 (1995).

No Offset Possible When Underinsured Provision Part of Uninsured Coverage of Policy: In response to a certified question from federal court, the Supreme Court reviewed the plaintiff's insurance policy to determine if the insurance company was due an offset for payments made by a third party to the plaintiff for injuries suffered by the plaintiff in an automobile accident. The Supreme Court held that the language in the policy pertaining to underinsurance was part of the policy dealing with uninsured coverage and that public policy prohibited any offset for coverage carried by the third-party tortfeasor. Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347, 48 St. Rep. 510 (1991), distinguished in Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998), and followed in Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003).

Umbrella Policy Not Automobile or Motor Vehicle Policy That Must Include Uninsured Motorist Coverage: The statutory definition of motor vehicle liability policy in 61-6-103 does not include excess insurance, such as an umbrella policy. Therefore, an umbrella policy does not constitute a motor vehicle liability policy as envisioned by this section, the uninsured motorist statute. Read together, these statutes clearly apply only to primary automobile insurance, not to a commercial umbrella policy issued to protect the insured from liability to third parties. However, this does not mean that an insurer may not offer additional uninsured motorist coverage as part of a primary policy or umbrella policy. Rowe v. The Travelers Indem. Co., 245 M 413, 800 P2d 157, 47 St. Rep. 1946 (1990).

Towing of Insured Vehicle by Uninsured Vehicle as Constituting "Use" for Uninsured Motorist Coverage; or "When Is an Uninsured Motorist Not an Uninsured Motorist?": The towing of an insured motor vehicle by an uninsured motor vehicle constitutes use of the insured vehicle for purposes of recovery under the uninsured motorist coverage law. Defendant who had no insurance did not qualify as an uninsured motorist when the use of his vehicle to tow another from a ditch was insured by coverage of the towed vehicle. Olmstead v. Hubert, 230 M 383, 751 P2d 160, 45 St. Rep. 290 (1988).

Conditions of Uninsured Motorist Not Met — Workers' Compensation Exclusive Remedy: The decedent employee was killed in an automobile accident while in the course of his employment. It was alleged that his coemployee's negligence was the sole cause of the accident. The decedents' heirs applied for and received workers' compensation benefits. In an action by the employee's heirs to recover damages from the coemployee's insurance company under a policy's uninsured motorist provisions, the trial court improperly held that the negligent driver was an uninsured motorist. The court reasoned, first, that 39-71-411 required that the heirs' exclusive remedy was the Workers' Compensation Act, thus the driver's insurance was not applicable and the driver was operating an uninsured vehicle. Second, the insurer's refusal to provide coverage under the "bodily injury" portion of its policy qualified the driver as an uninsured motorist. However, the Supreme Court reversed, holding that the driver was an insured motorist as he had coverage under legally adequate insurance policies, but recovery from him was dependent on and denied by the exclusive remedy provisions of the Workers' Compensation Act. Hubbel v. W. Fire Ins. Co., 218 M 21, 706 P2d 111, 42 St. Rep. 1365 (1985).

Insurers of Persons Injured by Uninsured Motorist Not Treated as Joint Tortfeasors for Purposes of Liability: When accident and injury are caused by uninsured motorist, insurance companies providing uninsured motorist coverage to parties involved cannot be held jointly and severally liable because an insurer's relationship to the uninsured motorist is based on contract, not tort. Guiberson v. Hartford Cas. Ins. Co., 217 M 279, 704 P2d 68, 42 St. Rep. 1196 (1985). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Restrictions on Uninsured Motorist Coverage Strictly Construed in Favor of Insured: The Supreme Court does not support provisions placed on uninsured motorist coverage that restrict or thwart available liability coverage which the insured would be entitled to in an accident. The language of an uninsured motorist provision is nullified where it gives less coverage for acts of the uninsured than it would to the insured, thus defeating the purpose of providing such coverage. Guiberson v. Hartford Cas. Ins. Co., 217 M 279, 704 P2d 68, 42 St. Rep. 1196 (1985). See also St. Farm Mut. Auto. Ins. Co. v. Taylor, 223 M 215, 725 P2d 821, 43 St. Rep. 1667 (1986), Nimmick v. St. Farm Mut. Auto. Ins. Co., 270 M 315, 891 P2d 1154, 52 St. Rep. 208 (1995), and Dagel v. Farmers Ins. Group, 273 M 402, 903 P2d 1359, 52 St. Rep. 1023 (1995).

Use of Insured Vehicle by Uninsured Driver — Denial of Coverage by Insurer — Uninsured Motorist Coverage Applicable: Sobieck crashed a car belonging to her boyfriend that was insured by Employers Mutual. Nimmick was a passenger and was injured. Nimmick's parents were insured by State Farm at the time of the accident, and the policy defined an uninsured motor vehicle as one uninsured as to its ownership, maintenance, or use and the ownership, maintenance, or use of which is insured or bonded for bodily injury liability at the time of the accident but the insuring company denies coverage or is or becomes insolvent. Employers Mutual initially denied coverage of Sobieck's use of the vehicle; therefore, in regard to any claim against Sobieck, the vehicle was uninsured under the State Farm policy. Even though ownership of the vehicle was insured, the vehicle was uninsured pursuant to Nimmick's policy if Sobieck's use of the vehicle was not insured. Nimmick v. St. Farm Mut. Auto. Ins. Co., 270 M 315, 891 P2d 1154, 52 St. Rep. 208 (1995).

Hit-and-Run Synonymous With Cause-and-Run — Physical Contact of Vehicles Not Required: While approaching a bridge, insured swerved to avoid a vehicle that had crossed the centerline into insured's lane. Insured hit a bridge abutment, his passenger was injured, and the other driver continued on and was never found. The insured's uninsured motorist coverage required physical contact between the two vehicles, though 33-23-201 did not. The court held, in a case of first impression, that the physical contact requirement defeated the purpose of and was repugnant to the statute and that coverage attached. The court also stated that, in other states in which the issue had arisen, there had been no flood of fraudulent claims involving so-called phantom vehicles and that the terms "hit-and-run" and "cause-and-run" were synonymous in this context, the former being a baseball colloquialism used to describe violation of a statute requiring a motorist involved in an accident to stop and render assistance and identification whether or not there was physical contact. The court cited with approval Hammon v. Farmers Ins. Group, 692 P2d 1202 (Idaho App. 1984), which ruled a physical contact requirement void as contrary to a statute strikingly similar to and in pertinent part the same as 33-23-201. McGlynn v. Safeco Ins. Co. of America, 216 M 379, 701 P2d 735, 42 St. Rep. 882 (1985).

Subrogation Under Uninsured Motorist Provision: An insurance company that pays an insured for personal injury under an uninsured motorist provision can subrogate and collect from the tortfeasor the amount paid to the insured. Farmers Ins. Exch. v. Christenson, 211 M 250, 683 P2d 1319, 41 St. Rep. 1342 (1984).

Meaning of "Uninsured Motorist" Under Specific Contract Provision: Under an uninsured motorist clause that defined an uninsured motor vehicle as a land motor vehicle "of which there is, in at least the amount specified by the financial responsibility law of the state ... no bodily injury liability insurance", a motorist carrying less than the amount of liability insurance specified by 61-6-103 is an uninsured motorist. Oleson v. Farmers Ins. Group, 185 M 164, 605 P2d 166 (1980).

Insolvent Insurer — Not Uninsured Motorist Coverage: Plaintiff settled with tortfeasor's insurance company for injuries sustained in an auto accident, but the company became insolvent before making payment. Plaintiff's own company was not liable under its "uninsured automobile" clause because there was no affirmative act by the insolvent insurer whereby it "denied coverage". Application of the Montana Insurance Guaranty Association Act, Title 33, ch. 10, part 1, protects plaintiff as effectively as a strained judicial construction of the uninsured motorist policy terms. Murray v. Mont. Ins. Guar. Ass'n, 175 M 220, 573 P2d 196 (1977).

Recovery From Primary Insurer: Recovery from primary insurer under uninsured motorist coverage, though applied against the total judgment, does not reduce the amount of coverage provided by secondary insurer. Sullivan v. Doe, 159 M 50, 495 P2d 193 (1972).

Workers' Compensation: Since uninsured motorist coverage is intended to place the injured policyholder in the same position he would have been if the uninsured motorist had liability insurance, the amount of plaintiff's recovery from uninsured motorist coverage cannot be reduced by any workers' compensation benefits received by him and the Insurance Commissioner had no authority to approve a policy providing for such reduction. Sullivan v. Doe, 159 M 50, 495 P2d 193 (1972).

UNINSURED MOTORIST COVERAGE — "STACKING" COVERAGE
(Decided Prior to 1997 Amendment to 33-23-203)

Multiple Vehicles Under One Policy: An insured had three vehicles covered under one policy. Under the policy, three premiums were paid for uninsured motorist coverage on the three vehicles. The son of the insured died of injuries received while riding in an uninsured vehicle. When sued for the maximum liability under each of the three uninsured motorist provisions, the insurer attempted to limit coverage. The attempt to limit the coverage under one policy to prevent combining of the coverage is in violation of Montana law and public policy. The insured bought insurance and paid premiums on three vehicles and may combine the coverage in the same fashion as is permitted if the vehicles were insured under three policies. [Decided prior to enactment of 33-23-203.] Chaffee v. USF&G Co., 181 M 1, 591 P2d 1102 (1979), distinguished in Chilberg v. Rose, 273 M 414, 903 P2d 1377, 52 St. Rep. 1038 (1995). Chilberg was distinguished in Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Sum of Coverages — Multiple Vehicles: In applying Montana law, the Supreme Court determined that uninsured motorist coverages are to be "stacked"; that is, in policies of insurance which cover two or more vehicles, if a separate premium has been charged and collected on each vehicle for uninsured vehicle coverage, the insured is entitled to recover under uninsured motorist coverage sums found legally recoverable up to the aggregate sum of the coverages on all the vehicles so insured. [Decided prior to enactment of 33-23-203.] Kemp v. Allstate Ins. Co., 183 M 526, 601 P2d 20 (1979), following Chaffee v. USF&G Co., 181 M 1, 591 P2d 1102 (1979), and distinguished in Chilberg v. Rose, 273 M 414, 903 P2d 1377, 52 St. Rep. 1038 (1995). Chilberg was distinguished in Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Separability Clause — Construction: Stacking of uninsured motorist coverage limits in a single policy based on number of vehicles was proper where provisions of policy's separability clause was contradictory to liability clause, thus ambiguous, permitting judicial construction in favor of insured. [Decided prior to enactment of 33-23-203.] Mtn. W. Farm Bureau v. Neal, 169 M 317, 547 P2d 79 (1976).

33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value.

Compiler's Comments

1997 Amendment: Chapter 71 at end inserted exception clause; and made minor changes in style.

Applicability: Section 3, Ch. 71, L. 1997, provided: "The amendments in [section 2] [33-23-202] apply to motor vehicle insurance policies issued or renewed after [the effective date of this act]." Effective October 1, 1997.

1987 Amendment: Following "Each" substituted "motor vehicle" for "automobile" and made minor changes in phraseology.

Case Notes

Dismissal Proper — Suit Filed Prior to Compliance With Policy Terms: The plaintiffs' insurance policy contained a clause that required implementing an appraisal procedure if the parties could not agree on the amount of loss. The policy also stated that no legal action could be initiated until there was full compliance with the terms of the policy. The insurer invoked the appraisal clause, but the plaintiffs refused to submit to the procedure and instead filed suit for damages and bad faith against the insurer. The Supreme Court held that summary judgment in favor of the insurer was appropriate in light of the clear language of the policy, and the court further held that the terms of the policy were a negative defense and did not have to be affirmatively set out in the defendants' answer. Dunn v. Way, 241 M 208, 786 P2d 649, 47 St. Rep. 213 (1990).

33-23-203. Limitation of liability under motor vehicle liability policy.

Compiler's Comments

2007 Amendment: Chapter 201 in (1)(c) at end inserted "if the premiums charged for the coverage by the insurer actuarially reflect the limiting of coverage separately to the vehicles covered by the policy and the premium rates have been filed with the commissioner"; and made minor changes in style. Amendment effective April 17, 2007.

Applicability: Section 3, Ch. 201, L. 2007, provided: "[This act] applies to motor insurance policies issued or renewed on or after [the effective date of this act]." Effective April 17, 2007.

1997 Amendments: Chapter 263 in (2), near beginning after "reductions of coverage", inserted "or subrogation clauses" and after "loss" inserted "under the motor vehicle liability policy or under another casualty policy that provides coverage for an injury that necessitates damages or benefit payments"; and made minor changes in style.

Chapter 495 substituted current text in (1) and (2) concerning limits of policy coverage for previous provisions that applied formula in former (1)(a) through (1)(c) in cases of multiple policies written on same insured or multiple premiums paid by same insured and authorized policy language prohibiting stacking of limits of multiple policies (see 1997 Session Law for former text); and inserted (3) and (4) concerning premium for specified coverage and excluding coverage for uninsured vehicle. Amendment effective May 2, 1997.

Applicability: Section 3, Ch. 495, L. 1997, provided: "[This act] [33-23-203 and 33-23-204] applies to all motor vehicle liability policies issued or renewed after [the effective date of this act]." Effective May 2, 1997.

1987 Amendment: Throughout section, before "vehicle" or "vehicles", inserted "motor" and made minor changes in phraseology.

Case Notes

Underinsured Motorist Coverage Conditioned on Being Otherwise Covered by Insurance Provider — Coverage for Motorcycles Not Offered by Insurance Provider — Unattainable Condition Precedent Violative of Public Policy — Denial of Medical Payment Coverage Under Contract Conditions Proper: A plaintiff was involved in a vehicle collision while riding his motorcycle. The plaintiff insured his vehicles through USAA, including underinsured motorist coverage and medical payment coverage. Because USAA did not provide motorcycle coverage in Montana, the plaintiff's motorcycle was insured through another provider, but the coverage did not include underinsured motorist or medical payment coverage. The language of the plaintiff's USAA policy covered underinsured motorist coverage for the plaintiff, but the policy explicitly excluded any of the plaintiff's vehicles that were not insured with USAA. Despite providing coverage if the plaintiff had been riding a motorcycle owned by another person, the policy did not cover the plaintiff's motorcycle. Because the exclusion of coverage was an unattainable condition precedent, it violated public policy, and the Supreme Court reversed the District Court's summary judgment in USAA's favor. Unlike the underinsured motorcyclist coverage, the medical payment coverage policy specified the categories of noncovered vehicles included in the coverage. Because motorcycle use did not satisfy the policy's enumerated coverage instances and because public policy was not violated by a denial of coverage in which the compensation has not been paid for the coverage, even if personal and portable, the District Court did not err by entering summary judgment in favor of USAA regarding the medical payment coverage. Goss v. USAA Cas. Ins. Co., 2021 MT 289, 406 Mont. 215, 498 P.3d 187.

Certified Question — No Stacking of Third-Party Liability Coverage Related to Airplane Crash — Liability Coverage Not Personal and Portable: The insurer of a plane that crashed and killed both the insured and a passenger claimed that it was required to pay one policy limit to the passenger's estate even though the insured held policies for two other planes as well. The federal District Court certified the question to the Supreme Court. The Supreme Court held that the policy was not subject to stacking because the plain unambiguous language of the contract limited the coverage to the aircraft involved. U.S. Specialty Ins. Co. v. Estate of Ward, 2019 MT 72, 395 Mont. 199, 444 P.3d 381.

Insurance Policy Prohibiting Stacking of Third-Party Liability Coverage Proper — Liability Coverage Not Personal and Portable: The defendant injured three plaintiffs in a car accident. The defendant, as well as his parents, and the business his father owned held insurance policies, four in total. After the defendant's insurer paid out the limit of liability coverage on the defendant's policy to each of the plaintiffs, the plaintiffs requested that the limit also be paid under the three other policies. When the defendant's insurer denied that claim, the plaintiffs filed suit. The District Court granted the defendant's motion for summary judgment, holding that stacking was not available to the plaintiffs because they were not named policyholders. On appeal, the Supreme Court affirmed. Cross v. Warren, 2019 MT 51, 395 Mont. 62, 435 P.3d 1202. See also U.S. Specialty Ins. Co. v. Estate of Ward, 2019 MT 72, 395 Mont. 199, 444 P.3d 381, holding that claims related to an airplane crash could not be stacked.

Antiduplication Clause — Motor Vehicle Insurance Coverage — No Violation of Reasonable Expectations Doctrine: The District Court did not err by holding that a clause prohibiting duplication of benefits in the insurer's policy was unambiguous and did not violate the reasonable expectations doctrine because it was clear and unequivocal that the insurer was entitled to offset its underinsured motorist obligation with its medical payment coverage. Cramer v. Farmers Ins. Exch., 2018 MT 198, 392 Mont. 329, 423 P.3d 1067.

Duplicate Payments Allowed Under Insurance Policy Language: Plaintiff was injured while working on his vehicle. He had a medical insurance policy and a separate motor vehicle policy with a medical payment provision. The medical insurer paid most of the claim. The plaintiff then sought payment of the entirety of the claim from the motor vehicle insurer, who denied the claim. The plaintiff alleged breach of contract and unfair trade practices. The Supreme Court found that the policy language did not limit the plaintiff from receiving a duplicate payment of medical expenses and that there was no basis in contract law, insurance law, or public policy that would prohibit such recovery. Winter v. St. Farm Mut. Auto. Ins. Co., 2014 MT 168, 375 Mont. 351, 328 P.3d 665. See also Cramer v. Farmers Ins. Exch., 2018 MT 198, 392 Mont. 329, 423 P.3d 1067, holding that where there is no clear and unambiguous policy language permitting an insurance company to offset its underinsured motorist obligation dollar-for-dollar with another company's underinsured motorist payment, the insurance company must pay its full contractual pro rata share of damages, even if another insurer has overpaid its share.

Exhaustion of Other Coverage Requirement Before Benefits Triggered — No Violation of Public Policy on Subrogation: A driver was in an accident while driving a business vehicle insured by the business through an insurer, and the driver incurred medical and other expenses. The driver sought recovery of medical payment benefits and underinsured motorist benefits through another insurer, her personal insurance company, Safeco. The driver argued that Safeco's policy unlawfully subrogated her claims because it required medical payment coverage and underinsured motorist coverage to be exhausted under any other applicable policy before triggering Safeco's concurrent duty to pay benefits. The Supreme Court held that this case was not a de facto subrogation case because Safeco had not attempted subrogation and had not rejected the driver's insurance claims. Safeco's policy merely stated that it was only a secondary insurer and that excess benefits would be available only after the first insurer had paid full benefits. Scheafer v. Safeco Ins. Co., 2014 MT 73, 374 Mont. 278, 320 P.3d 967.

Insured Made Whole for Property Damage Under Separate Collision Coverage — Subrogation Available: The U.S. District Court certified to the Montana Supreme Court the question of whether an insurer is prohibited from exercising its rights of subrogation when payment had been made for property damage under one coverage but the insured asserted he was not made whole for bodily injury damages paid under a different coverage. The plaintiff had purchased his auto insurance policy from the defendant, including separate, optional collision coverage, and was subsequently involved in an accident in which another driver was at fault. As a result of the accident, the plaintiff suffered both property damage and bodily injury; he recovered money for his bodily injury damages under the original policy from the defendant and from the other driver's insurance company but claimed that his bodily injury damages exceeded both the payments he received and the policy limits. The defendant also paid the costs for the property damage under the provisions of the collision coverage policy, then sought subrogation for these expenses from the other driver's insurance company. The plaintiff brought suit alleging that the defendant violated Montana law by seeking subrogation for the property damage before he had been made whole for the related personal injuries. The Supreme Court held that the defendant was entitled to seek subrogation because the insured had been made whole for the element of damage for which he purchased insurance under the separate property damage policy. Van Orden v. United Serv. Auto. Ass'n, 2014 MT 45, 374 Mont. 62, 318 P.3d 1042.

Insurance Contract Choice of Law Provision — Montana Law Incorrectly Applied to Nevada Policy: The District Court conducted a conflict of law analysis and concluded that Montana law governed Tenas's entitlement to damages for an accident that occurred in Montana under a personal auto policy that Tenas's mother obtained in Nevada. On appeal, the Supreme Court reversed. Nevada was determined to have a materially greater interest than Montana based on the fact that: (1) Nevada was the place of contracting; (2) although Montana represented a place of performance under the policy, place of performance weighed heavily toward Nevada because Tenas and her mother were mere visitors to Montana; (3) Tenas and her mother resided in Nevada, so that state had a greater interest regarding domicile, residence, nationality, place of incorporation, and place of business of the parties; and (4) a policy choice of law provision required application of Nevada law to resolve any disputes. Given Nevada's greater interest, the District Court improperly applied Montana law to the dispute. Tenas v. Progressive Preferred Ins. Co., 2008 MT 393, 347 M 133, 197 P3d 990 (2008). See also Casarotto v. Lombardi, 268 M 369, 886 P2d 931, 51 St. Rep. 1350 (1994), Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003), Wamsley v. Nodak Mut. Ins. Co., 2008 MT 56, 341 M 467, 178 P3d 102 (2008), and Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008).

Farmowners Policy Construed to Cover Individuals, Not Partnership: Modroo's daughter was killed in an auto accident, and Modroo sought coverage under a farmowners policy that listed Modroo (and by definition Modroo's family members) as insureds. The insurer asserted that the policy was for the family farming partnership and covered only insureds who were driving a vehicle insured under the policy, which the daughter was not. The District Court agreed and held that the policy did not cover Modroo individually or family members. On appeal, the Supreme Court determined that the insurer's interpretation was reasonable but was not the only interpretation. Another reasonable interpretation was that the policy granted Modroo coverage as an individual because the named insured block on the form listed Modroo, not the partnership. If the insurer intended to cover only the partnership, that entity could have been listed as the named insured, but no reason existed for the insurer to list individuals as insureds unless it intended coverage to apply to them. Construing the ambiguity against the insurer, the policy was held to cover Modroo individually, and the daughter as a family member as well. Modroo was entitled to medical payments under the farmowners policy and the District Court decision was reversed. Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008). See also Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003).

Ohio Law Applied to Disallow Stacking of Coverages — Offsets Allowed: The District Court conducted a conflict of law analysis and concluded that Ohio law governed Modroo's entitlement to damages for an accident that occurred in Montana under a personal auto policy that Modroo obtained in Ohio. Under Ohio law, stacking of policy coverages is disallowed and offsets are allowed. Citing Csulik v. Nationwide Mut. Ins. Co., 723 NE 2d 90 (Ohio 2000), Modroo contended that the policy's multiple choice-of-law provisions resulted in ambiguity and that Montana law should have applied because it is more favorable to the insured. The Supreme Court disagreed and noted that although the policy provided for payment of compensatory damages under Montana tort law while also providing that Ohio law governed interpretation of the contract, the presence of two choice-of-law provisions did not necessarily create an ambiguity. The issue of stacking policies was a question of contract law rather than tort law, so the Ohio law applied. Likewise, the provisions in the policy that any amounts available under uninsured motorist coverage would be offset by any amounts available for payment by or on behalf of any liable parties also presented a question of contract law, so Ohio law applied to that issue as well. The Supreme Court declined to overrule its choice of law principles. The District Court did not err in applying Ohio law to the stacking and offset issues. Modroo v. Nationwide Mut. Fire Ins. Co., 2008 MT 275, 345 M 262, 191 P3d 389 (2008). The Modroo choice of law rationale was also applied in Tucker v. Farmers Ins. Exch., 2009 MT 247, 351 M 448, 215 P3d 1 (2009). In Tidyman's Management Serv. v. Davis, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135, the Supreme Court overruled Tucker to the extent it suggested that the "materially greater interest" factors supplant the rule from Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 Mont. 281, 68 P.3d 703, when an insurance contract does not contain a choice-of-law provision.

Policy Modification Reducing Uninsured Motorist Coverage Constituting Less Favorable Terms Requiring Notice to Insured — Adequacy of Notice: Prior to 1996 and in anticipation of Supreme Court antistacking decisions, the insurer converted Robertus's uninsured/underinsured motorist policy to charge Robertus a single premium for all seven of Robertus's vehicles instead of requiring Robertus to pay a separate amount for each vehicle, which resulted in a total coverage of $300,000. However, the insurer did not send a separate notice of the change to Robertus. When Robertus was subsequently injured in one of the vehicles, Robertus sought to recover the total policy amount for all seven vehicles in the amount of $2.1 million, but the insurer agreed to pay only $300,000. Robertus sued on grounds that because the insurer failed to provide notice of the policy change, Robertus was entitled to up to $2.1 million. The District Court held that Robertus was effectively notified of the change because of the significant reduction in the price of the policy and the changes noted on the declarations page. Robertus appealed. The Supreme Court concluded that Robertus would have been entitled to stack the seven policies under the law in effect at the time of the accident and prior to the policy change, that the insurer's attempt to avoiding stacking by revising the policy to reduce Robertus's coverage by nearly $2 million constituted less favorable terms requiring the insurer to provide notice to Robertus pursuant to the 1995 version of 33-15-1106, and that the District Court erred in concluding otherwise. Robertus v. Farmers Union Mut. Ins. Co., 2008 MT 207, 344 M 157, 189 P3d 582 (2008).

Insurance Subrogation Prior to Insured Being Made Whole — Requirements for Class Action Certification Met: Ferguson sought class action certification of a case involving an insurer that subrogated against the tortfeasor's insurance carrier before Ferguson was made whole. The District Court denied certification on grounds that under Swanson v. Hartford Ins. Co. of the Midwest, 2002 MT 81, 309 M 269, 46 P3d 584 (2002), the legal duty for insurers taking subrogation eliminated the common issue and on grounds that because Ferguson's case required fact-specific determinations of "made whole" entitlements, class action was not appropriate. On appeal, the Supreme Court reversed. As in Sieglock v. Burlington N. Santa Fe Ry. Co., 2003 MT 355, 319 M 8, 81 P3d 495 (2003), the District Court failed to consider whether the plaintiff class presented common issues of fact, particularly the common issues of fact arising from the insurer's subrogation program. The existence of the well-established duty on the part of the insurer to make the insured whole prior to subrogation, as set out in Swanson, did not eliminate the common fact issue of whether the insurer programmatically breached that duty, and when a common scheme of deceptive conduct is alleged, common questions of law or fact will exist (see Powers v. Gov't Employees Ins. Co., 192 FRD 313 (S.D. Fla. 1998)). Thus, Ferguson satisfied the commonality issue. The District Court further erred in reasoning that Ferguson failed to demonstrate that any common issues predominate over questions affecting only individual members of the affected class. Ferguson's challenge was not to an error in the insurer's application of the "made whole" rule to any given insured, but rather to the procedures of a program of subrogation that systematically deprived all class members of any consideration of their "made whole" rights, so predominance was not required for class certification in this case. Lastly, the efficient remedy of classwide declaratory relief was appropriate because the size of the average claim was so small that relief for the average class member was not economically available outside of class litigation. The case was remanded for further proceedings as a class action. Ferguson v. Safeco Ins. Co. of America, 2008 MT 109, 342 M 380, 180 P3d 1164 (2008).

Failure of Insured to Timely Notify Insurer of Claim — Coverage Precluded: Lee's insurance policy with Great Divide Insurance Company (Great Divide) required Lee to promptly send Great Divide copies of legal papers if a suit was brought. Lee never sent Great Divide a copy of a complaint alleging uninsured motorist coverage against a different insurer and did not provide Great Divide with a copy of a second amended complaint until 2 ½ years after the initial complaint. Notice of the suit did not disclose that the uninsured driver could not be found, that default judgment of over $1 million would be sought against the uninsured driver, and that Lee would pursue a suit against Great Divide. These omissions were a material breach of Lee's policy obligations and were independently sufficient to deny coverage to Lee. Great Divide was entitled to summary judgment. Lee v. Great Divide Ins. Co., 2008 MT 80, 342 M 147, 182 P3d 41 (2008).

No Corporate Policy Coverage for Person Occupying Vehicle Not Listed in Policy: Lee's corporate insurance policy covering company vehicles limited coverage to the corporation and to anyone else occupying a covered auto or temporary substitute for a covered auto. Lee was injured while driving a vehicle that was not listed in the policy or considered a substitute vehicle, but claimed that the policy should nevertheless be interpreted to provide coverage. The District Court determined that no coverage existed under the policy and granted summary judgment to the insurer. On appeal, the Supreme Court declined to expand corporate policy coverage to injured persons involved in the corporation who were not occupying a vehicle covered under the policy at the time of the accident. Summary judgment was affirmed. Lee v. Great Divide Ins. Co., 2008 MT 80, 342 M 147, 182 P3d 41 (2008), following Chilberg v. Rose, 273 M 414, 903 P2d 1377 (1995), and Lierboe v. St. Farm Mut. Auto. Ins. Co., 2003 MT 174, 316 M 382, 73 P3d 800 (2003).

Policy Limiting Medical Coverage to Only Vehicle Being Driven Despite Coverage on Multiple Vehicles Violative of Public Policy — Lierboe Clarified: Gibson insured three vehicles with State Farm. Each policy provided medical payment coverage in the amount of $5,000. Gibson was injured while driving one of the vehicles, and medical expenses exceeded $5,000, so Gibson sought to stack the policies and recover under all three policies. However, each policy contained language that medical expenses would be paid only under the policy on the vehicle that was involved in an accident, so State Farm declined to pay more than $5,000. The District Court relied on Lierboe v. St. Farm Mut. Auto. Ins. Co., 2003 MT 174, 316 M 382, 73 P3d 800 (2003), for the holding that no stacking question exists when coverage is applicable to only one policy and granted State Farm a declaratory judgment on grounds that Gibson could not stack the policies because only the policy on the vehicle involved in the accident applied. Gibson appealed, and the Supreme Court reversed. State Farm's policy language violated public policy by allowing State Farm to recover valuable consideration for coverage that was not provided. Public policy favors adequate compensation, even for nonmandatory coverage. The Supreme Court also clarified Lierboe by limiting its analysis to instances in which a claimant seeks to stack coverages from a vehicle that the claimant does not own and from an insurance policy that the claimant did not purchase. St. Farm Mut. Auto. Ins. Co. v. Gibson, 2007 MT 153, 337 M 509, 163 P3d 387 (2007), following Ruckdaschel v. St. Farm Mut. Auto. Ins. Co., 285 M 395, 948 P2d 700 (1997), and Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003).

Underinsured Motorist Coverage Applied to Vehicle Rather Than Owner or Operator: Plaintiffs' vehicle was struck by a rental truck driven by an intoxicated driver. Plaintiffs obtained a default judgment against the driver and settled with the truck rental company and then sought benefits from their own insurer under their underinsured motorist policy. The policy provided for payment only after the limits of liability under any applicable bodily injury bonds or policies were exhausted. Thus, application of underinsured coverage was dependent on the available coverage on the vehicle at issue, which, in this case, was the rental truck that was covered by a $7 million bodily injury policy. That amount exceeded plaintiffs' damages, so the rental truck could not be considered underinsured, and plaintiffs were therefore not entitled to remuneration from their insurer. Mecca v. Farmers Ins. Exch., 2005 MT 260, 329 M 73, 122 P3d 1190 (2005), distinguishing Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114 (1998).

Retroactive Applicability of Decision Prohibiting Antistacking of Insurance Provisions to Pending Cases: In Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003), the Supreme Court decided that antistacking provisions in an underinsured motorist policy were unconstitutional. Plaintiffs brought a class action in federal court claiming that Hardy entitled them to additional payments from past insurance claims that were not previously allowed because their policies did not allow for stacking. The federal court certified the question to the Supreme Court as to whether Hardy applied prospectively only or retroactively to qualified claims arising before the Hardy decision. The Supreme Court agreed with the decision in Harper v. Va. Dept. of Taxation, 509 US 86 (1993), that limiting a rule of law to its prospective application creates an arbitrary distinction between litigants based merely on the timing of their claims and that in the interests of fairness and finality, the line should be drawn between claims that are final and claims that are not. The Supreme Court then decided that the retroactivity test in Chevron Oil Co. v. Huson, 404 US 97 (1971), still applies to Montana civil decisions if all three Chevron factors are met: (1) the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed; (2) the court must weigh the merits and demerits in each case by looking at the prior history of the rule in question, its purpose and effect, and whether retroactive application will further or retard its operation; and (3) the inequity imposed by retroactive application has been weighed. However, the retroactive effect of a decision does not apply to cases that became final or that were settled prior to a decision's issuance. Thus, Hardy applies retroactively in qualifying circumstances on open claims arising before its issuance and is limited to cases pending on direct appeal or not yet final. Dempsey v. Allstate Ins. Co., 2004 MT 391, 325 M 207, 104 P3d 483 (2004). See also LaMere v. Farmers Ins. Exch., 2011 MT 272, 362 Mont. 379, 265 P.3d 617, holding that under Dempsey, a settled case is considered final.

No Stacking Question When Coverage Applicable to Only One Policy: Plaintiff contended that she should be allowed to stack the personal medical payment coverage on a vehicle that she was driving with the corporate medical payment coverage on a company vehicle that she was not driving, citing Ruckdaschel v. St. Farm Mut. Auto. Ins. Co., 285 M 395, 948 P2d 700 (1997). However, the policy on the company vehicle clearly excluded coverage for plaintiff's accident in another vehicle, and the medical payment coverage for plaintiff's vehicle followed only the listed vehicle and not other vehicles. Therefore, because plaintiff's vehicle was covered by only a single policy, there was no second policy to stack, so Ruckdaschel did not apply. Rather, as in Chilberg v. Rose, 273 M 414, 903 P2d 1377 (1995), coverage was excluded under the second policy because plaintiff did not occupy the vehicle covered by that policy, so plaintiff could not have reasonable expectations of coverage under a policy for which she was not qualified as an insured. Lierboe v. St. Farm Mut. Auto. Ins. Co., 2003 MT 174, 316 M 382, 73 P3d 800 (2003), clarified in St. Farm Mut. Auto. Ins. Co. v. Gibson, 2007 MT 153, 337 M 509, 163 P3d 387 (2007), to apply to instances in which a claimant seeks to stack coverages from a vehicle that the claimant does not own and from an insurance policy that the claimant did not purchase.

Offset Provision in Underinsured Motorist Policy Violative of State Policy — Antistacking Provisions Unconstitutional: Hardy paid separate premiums for underinsured motorist (UIM) coverage of $50,000 a person and $100,000 an accident for each of three vehicles. Hardy was injured when the vehicle that he was riding in was negligently struck by another car. Hardy recovered $50,000 from the other driver's liability insurer, but that amount was insufficient to cover Hardy's injuries, so Hardy sought compensation pursuant to the UIM coverage on his vehicles. Hardy believed that the policies could be stacked to aggregate $150,000 of UIM coverage. Defendant insurance company denied coverage, and Hardy sued in federal District Court. The insurer raised three arguments in its defense, contending that: (1) the tortfeasor's vehicle was not underinsured, as defined in the policy, because the total liability coverage for the tortfeasor's vehicle was equal to the highest single UIM coverage limit in Hardy's policy; (2) the policy required Hardy's UIM coverage for one vehicle to be offset by all amounts recovered from the tortfeasor; and (3) Hardy's UIM coverages could not be stacked or aggregated for purposes of either comparing limits or affording $150,000 of UIM coverage. The federal District Court certified the three questions to the Montana Supreme Court, which determined that the UIM definition and offset clause in Hardy's policy violated Hardy's reasonable expectation of coverage when a tortfeasor's insurance provided inadequate indemnity. The policy declarations page suggested coverage in an amount that was actually not available; therefore, the terms of the UIM coverage were ambiguous in violation of Montana public policy and rendered the coverage that the insurer promised to provide illusory. Further, the provisions of this section that allow insurers to charge premiums for nonexistent coverage are not rationally related to the objective of maintaining affordable insurance in Montana and constitute an arbitrary and capricious legislative action that is unconstitutionally violative of due process. A Montanan should reasonably expect coverage up to the aggregate limits of separate policies when a separate premium for UIM coverage was charged for each policy. Antistacking provisions that allow an insurer to receive valuable consideration for coverage that is not provided are against public policy. (See 2007 amendment.) Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 M 107, 67 P3d 892 (2003), followed in Mitchell v. St. Farm Ins. Co., 2003 MT 102, 315 M 281, 68 P3d 703 (2003), and distinguished in Parish v. Morris, 2012 MT 116, 365 Mont. 171, 278 P.3d 1015. The Hardy decision was applied retroactively to open claims arising before its issuance and was limited to cases pending on direct appeal or not yet final in Dempsey v. Allstate Ins. Co., 2004 MT

391, 325 M 207, 104 P3d 483 (2004), which was followed in LaMere v. Farmers Ins. Exch., 2011 MT 272, 362 Mont. 379, 265 P.3d 617, holding that under Dempsey, a settled case is considered final. See also Chaffee v. USF&G Co., 181 M 1, 591 P2d 1102 (1979), and Bennett v. St. Farm Mut. Auto. Ins. Co., 261 M 386, 862 P2d 1146 (1993).

Two Rules of Subrogation — Colorado Subrogation Choice of Law Provision Violative of Montana Public Policy: The Swansons were part-time residents of Montana and Colorado. They paid their automobile insurance premiums through Hartford Insurance Company (Hartford) in Colorado, but were involved in an accident in Montana with a truck owned by USF/Reddaway, incurring over $50,000 in medical expenses. Their policy included: (1) a Colorado statutorily required type of no-fault insurance called personal injury protection, or PIP, under which Hartford was required to pay certain losses and expenses, including medical expenses, lost wages, and rehabilitation expenses; (2) a subrogation clause granting Hartford the right to recover any payments made under PIP in the event that the Swansons recovered damages from the party responsible for the bodily injury; and (3) a choice of law provision providing that any dispute concerning the denial or delay of PIP benefits or subrogation rights would be governed by Colorado law. Hartford paid some claims but denied others, and later learned that USF/Reddaway's insurer intended to pay the Swansons, so Hartford decided to pursue subrogation to recover money that it had paid. The Swansons settled with USF/Reddaway's insurer, but USF/Reddaway's limits of liability exceeded the amount of the settlement. The Swansons eventually sued Hartford for breach of contract and unfair claim settlement. Hartford had the case removed to Montana federal District Court, which certified three questions to the Montana Supreme Court. The Supreme Court cited Skauge v. Mtn. St. Tel. & Tel., 172 M 521, 565 P2d 628 (1977), for the doctrine that an insured must be made whole before an insurer may assert its subrogation rights, which means that not only must the insured recover all losses, but costs of recovery as well, including attorney fees and litigation costs. The 1997 amendments to this section allowed for reasonable subrogation, but did not include a specific "made whole" requirement. Nevertheless, common law and the statute jointly establish two rules of subrogation. First, an insured should not receive duplicate payments for the same element of loss, and second, the insurer may not assert subrogation rights until the insured has been fully compensated for damages, regardless of any contract language to the contrary. The Colorado provision providing a choice of law would allow subrogation before the insured is made whole, and is therefore a violation of Montana public policy. Swanson v. Hartford Ins. Co. of the Midwest, 2002 MT 81, 309 M 269, 46 P3d 584 (2002), following Youngblood v. Am. St. Ins. Co., 262 M 391, 866 P2d 203 (1993). See also DeTienne Associates Ltd. Partnership v. Farmers Union Mut. Ins. Co., 266 M 184, 879 P2d 704 (1994).

Purchase of Separate, Specific Motor Vehicle Policy Not Considered to Terminate Coverage as After-Acquired Vehicle Under Prior Policy: Prior to purchasing a Ford Escort, Fitzpatrick had a liability policy (policy one) in effect that provided coverage of $500,000 per occurrence, identified three vehicles as insured, and provided similar coverage for any newly acquired car obtained during the policy period, but only until Fitzpatrick asked for insurance on the newly acquired vehicle and paid any required additional premium or within 30 days of purchase, whichever was shorter. After buying the Escort and within the required time, Fitzpatrick requested a separate policy (policy two) for that vehicle, with coverage of $100,000 per occurrence, but was never billed for any additional premium. Both policies were in effect when Christensen was injured while riding in the Escort. The insurer claimed that $100,000 was available under policy two and tendered that amount to pay health care providers and the various claimants. Christensen asked the District Court to conclude that additional coverage was available under the "after-acquired vehicle" provision in policy one, asserting that both policies should be stacked to provide a total of $600,000 of coverage. The District Court relied on Bramlett v. St. Farm Mut. Auto. Ins. Co., 468 P2d 157 (Kans. 1970), and Beck v. Aetna Cas. & Surety Co., 553 P2d 397 (Colo. 1976), in holding that the purpose of after-acquired vehicle coverage is to provide automatic coverage only until coverage on the new vehicle is obtained, that because a separate, specific policy had been requested, the Escort was not an after-acquired vehicle under policy one, and that therefore coverage should be limited to $100,000. The Supreme Court distinguished Bramlett and Beck because the policy language in those cases was not the same and found the reasoning in Carey v. St. Farm Mut. Ins. Co., 367 F2d 938 (4th Cir. 1966), to be more persuasive. In the present case, the policy did not require Fitzpatrick to elect coverage if more than one policy was applicable, as it did in Bramlett and Beck. Rather, as in Carey, the clear policy language expressly extended coverage to all after-acquired vehicles, provided that notice was timely. Therefore, the District Court erred when it concluded that the purchase of specific coverage under policy two terminated coverage as an after-acquired vehicle under policy one. If other conditions of after-acquired vehicle coverage are met, coverage on the newly acquired vehicle attaches at the time of acquisition and for the policy period unless the insured refuses to pay any additional premium that is requested, which she was not. Further, Fitzpatrick's policy limiting the maximum amount recoverable to the highest applicable limit under any one policy, when more than one company policy applied to the same occurrence, was found to comport with Montana's antistacking provisions in this section. The highest applicable limit in this case was $500,000 under policy one, of which $400,000 remained, and the case was reversed to make the additional money available. Christensen v. Mtn. W. Farm Bureau Mut. Ins. Co., 2000 MT 378, 303 M 493, 22 P3d 624, 57 St. Rep. 1608 (2000).

Uninsured and Underinsured Motorist Coverage Mutually Exclusive — Stacking of Uninsured Coverage Allowed Under 1991 Version of Statute: Plaintiff insurer issued one policy covering two vehicles owned by the Oies. Separate premiums were paid for each vehicle for uninsured and underinsured motorist endorsements. After an accident involving an uninsured vehicle, the insurer filed a declaratory judgment action in federal court to determine its duties under the policy. The federal court certified certain questions to the Montana Supreme Court to resolve under Montana law. The Supreme Court held that a motorist who carries both uninsured and underinsured motor vehicle coverage has two distinct and mutually exclusive coverages. Since a tortfeasor cannot be both uninsured and underinsured, the injured party cannot invoke both types of coverage. The court distinguished prior cases and further held that the 1991 version of this section, which focused only on vehicles insured rather than the number of premiums paid, did not apply in this case in which the insured had paid separate premiums for uninsured motorist coverage and that an insured who paid separate premiums for uninsured motorist coverage may stack the uninsured motorist coverages available within the policy. (See 1997 amendment.) Dak. Fire Ins. Co. v. Oie, 1998 MT 288, 291 M 486, 968 P2d 1126, 55 St. Rep. 1179 (1998).

Release of Third-Party Tortfeasor Does Not Preclude Recovery of Auto Medical and Underinsured Motorist Benefits — Passenger in Covered Vehicle Is "Insured" — Stacking of Benefits Allowed: The U.S. District Court certified to the Montana Supreme Court the question of whether Holeman's general release of the third-party tortfeasor barred recovery from Farmers under the underinsured motorist provisions of its policy and, if not, whether benefits could be stacked under the policy. The Montana Supreme Court concluded that: (1) an insurer's liability for underinsured motorist benefits arises from the terms of the contract and its contractual relationship with its insured and that reading the policy as a whole, construing ambiguities against the insurer, the release does not bar Holeman from recovering under the underinsured motorist provisions of the Farmers policy; and (2) the reasonable expectations doctrine and overriding public policy mandate that Holeman be permitted to stack the underinsured motorist coverages and auto medical payment coverages under the policy at issue in this case, in which multiple vehicles are insured under one policy and in which a premium is charged for coverage of each motor vehicle listed within the policy. Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Statutory Changes Not Applied Retroactively: In an earlier referral in the same case, the Montana Supreme Court held that the antistacking provisions of this section, before its amendment in 1997, did not apply to underinsurance and medical payment coverage when a premium was charged for coverage of each vehicle. In a subsequent referral from the U.S. District Court, the Montana Supreme Court refused to retroactively apply the 1997 statutory changes that prohibited all stacking, and the public policy embodied in the changes, and allowed stacking of underinsured and medical payment provisions of one policy covering multiple vehicles. Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Antistacking Provisions Violate Public Policy — Holding Applicable to Optional Types of Coverage: The plaintiffs sued to obtain medical payments under three policies with the insurer after Tami was injured as a pedestrian. The insurer allowed coverage under only one policy pursuant to an amendatory endorsement to each policy that limited liability under all policies to that of the policy with the highest liability. The District Court granted the plaintiffs' motion for summary judgment as to coverage issues. On appeal, the Supreme Court allowed stacking of medical payment coverage in spite of the endorsement language. The court rejected the insurer's argument that Montana's public policy against antistacking provisions applies only to coverage that insurance companies are required by statute to offer to all customers and not to optional types of coverage, such as medical payment and underinsured motorist coverage. The court held that the absence of a statutory requirement for that type of coverage is irrelevant because the public policy considerations that invalidate contractual antistacking provisions in mandatory insurance coverage also support invalidating those provisions in an optional type of insurance coverage. Ruckdaschel v. St. Farm Mut. Auto. Ins. Co., 285 M 395, 948 P2d 700, 54 St. Rep. 1210 (1997).

Stacking of Optional Motor Vehicle Coverages Not Allowed — Underinsurance and Medical Payment Coverage Not Included: The U.S. District Court certified to the Montana Supreme Court the question of whether this section prohibits the stacking of underinsured motorist coverage and medical payment coverage available under a policy of motor vehicle liability insurance when a premium is charged for coverage of each motor vehicle listed within the policy. The Supreme Court answered in the negative, noting that this section does not allow stacking unless a liability policy provides otherwise. The antistacking provisions apply to any policy of motor vehicle insurance against liability now or hereafter required under 33-23-201 or Title 61, ch. 6, parts 1 and 3. However, the antistacking provision does not apply to underinsurance and medical payment coverage when a premium is charged for coverage of each motor vehicle listed within the policy because those coverages do not qualify as liability insurance. (See 1997 amendment.) Farmers Alliance Mut. Ins. Co. v. Holeman, 278 M 274, 924 P2d 1315, 53 St. Rep. 904 (1996), distinguishing Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347 (1991). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Choice of Applicable State Law — Application of Motor Vehicle Insurance Policy Stating Oregon Subrogation Law: Generally, the law of the place where an insurance contract was made governs questions of execution and validity of the contract, while the law of the place of performance controls the legal construction and effect of the contract. In a motor vehicle insurance contract made in Oregon and performed in Montana, a choice of law provision that required application of Oregon subrogation law violated Montana public policy and was unenforceable. Youngblood v. Am. St. Ins. Co., 262 M 391, 866 P2d 203, 50 St. Rep. 1601 (1993).

Subrogation of Medical Payments Under Motor Vehicle Insurance Policy — Against Public Policy: Subrogation is an equitable doctrine that is not dependent on privity or on a contractual relationship between the parties. Its purpose is to prevent injustice by compelling the ultimate payment of a debt by the one who, in justice, equity, and good conscience, should pay it, and it is an appropriate means of preventing unjust enrichment. Subrogation is distinguishable from assignment of a claim. With some exceptions, subrogation between an insurer and an insured up to the amount the insurer actually paid is allowed if the insured has been fully compensated, including compensation for costs and attorney fees. One exception is a motor vehicle insurance medical payments subrogation clause, which violates public policy because the insured paid a premium for medical coverage, the insured is the one likely to suffer most if medical payments received must be repaid out of a third-party recovery, and the tortfeasor's insurer may believe that the injured insured has already been paid medical expenses and that the insurer can thus make a smaller offer on the basis that medical payments have already been made. Youngblood v. Am. St. Ins. Co., 262 M 391, 866 P2d 203, 50 St. Rep. 1601 (1993).

Subrogation Under Motor Vehicle Insurance Policy: "Subrogation" is a term of art, and had the Legislature intended to include it in subsection (2) of this section, the Legislature could easily have done so. The court is not persuaded that subrogation was intended to be in or should be read into the subsection. (See 1997 amendment.) Youngblood v. Am. St. Ins. Co., 262 M 391, 866 P2d 203, 50 St. Rep. 1601 (1993).

Stacking Underinsured Coverage Provided by Separate Policies From the Same Insurer: Bennett was injured in a pedestrian crosswalk when struck by a vehicle driven by Wind. Wind's insurance was not sufficient to cover Bennett's damages, which were alleged to be in excess of $200,000. Bennett argued that she was entitled to stack the underinsured coverage in a State Farm policy issued to her that insured one vehicle and the underinsured coverage in a State Farm policy issued to her husband. State Farm resisted on the basis that the statute allowing stacking specifically referred to uninsured coverage and therefore public policy limited stacking to uninsured coverage, which an insurer was required to offer to customers in Montana. The Supreme Court held that the absence of a statutory requirement was irrelevant. The policy language makes underinsured coverage personal to the insured and does not depend on the insured occupying an insured vehicle, thus the insured is entitled to reasonably expect to recover damages up to the limit of both policies and to exclude stacking would violate Montana's public policy. (See 1997 amendment.) Bennett v. St. Farm Mut. Auto. Ins. Co., 261 M 386, 862 P2d 1146, 50 St. Rep. 1371 (1993), followed in Ruckdaschel v. St. Farm Mut. Auto. Ins. Co., 285 M 395, 948 P2d 700, 54 St. Rep. 1210 (1997), and Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998), and distinguished in Chilberg v. Rose, 273 M 414, 903 P2d 1377, 52 St. Rep. 1038 (1995). Chilberg was distinguished in Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Insurer's Liability Not Subject to Canadian Tort Law: The plaintiff, relying on the policy's underinsurance clause, sought reimbursement from the insurer for injuries suffered in an automobile accident in Canada. The insurer argued that it was only liable for those damages allowed under the restrictive Canadian tort laws. The Supreme Court held that those damages that the plaintiff could not obtain reimbursement for under Canadian law could be recovered under the underinsurance clause because the policy was governed by the contract laws of the place where it was created and not by tort law. St. Farm Mut. Auto. Ins. Co. v. Estate of Braun, 243 M 125, 793 P2d 253, 47 St. Rep. 1043 (1990), followed in Wellcome v. Home Ins. Co., 257 M 354, 849 P2d 190, 50 St. Rep. 305 (1993).

Insurers of Uninsured Motorist Not Treated as Joint Tortfeasors for Purposes of Liability: When accident and injury are caused by uninsured motorist, insurance companies providing uninsured motorist coverage to parties involved cannot be held jointly and severally liable because an insurer's relationship to the uninsured motorist is based on contract, not tort. Guiberson v. Hartford Cas. Ins. Co., 217 M 279, 704 P2d 68, 42 St. Rep. 1196 (1985). See also St. Farm Mut. Auto. Ins. Co. v. Taylor, 223 M 215, 725 P2d 821, 43 St. Rep. 1667 (1986), and Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Primary Insurance Company Solely Responsible for Liability: While making a delivery for his employer, Roach and Smith Distributors, Guiberson parked a delivery truck outside the Warm Springs store, leaving the keys in the ignition. Tintinger, a patient at Warm Springs state hospital, and another patient got in the truck and began to drive it away. Guiberson jumped in the truck and unsuccessfully attempted to persuade Tintinger to stop the truck. Eventually the truck overturned and Guiberson was injured. Guiberson sued Hartford Casualty Insurance, his personal insurer, under an uninsured motorist provision. Hartford joined, as third-party defendants, State Farm, Roach and Smith Distributors' insurer, and the state of Montana. State Farm's policy also contained uninsured motorist coverage. The jury returned a verdict in favor of Guiberson for $600,000, finding Tintinger and the state equally responsible for Guiberson's injuries. Based on the insurance policies, the court apportioned Tintinger's portion of the judgment between Hartford and State Farm. The Supreme Court reversed, ruling that the insurance policies indicated that Hartford contracted to be an excess insurer only, that State Farm was a primary insurer, and that under a "stacking" approach (now abolished, 33-23-203) State Farm's insurance adequately covered Tintinger's liability. Guiberson v. Hartford Cas. Ins. Co., 217 M 279, 704 P2d 68, 42 St. Rep. 1196 (1985). See also St. Farm Mut. Auto. Ins. Co. v. Taylor, 223 M 215, 725 P2d 821, 43 St. Rep. 1667 (1986).

Section Not Retroactive: This section is not retroactive. Guiberson v. Hartford Cas. Ins. Co., 217 M 279, 704 P2d 68, 42 St. Rep. 1196 (1985). See also St. Farm Mut. Auto. Ins. Co. v. Taylor, 223 M 215, 725 P2d 821, 43 St. Rep. 1667 (1986).

Motor Vehicle Liability Insurance — Implied Consent Construed: Plaintiff owned and insured a fleet of vehicles. One of the vehicles was used primarily by the wife and son of plaintiff's president. The president's son and a school friend, McArthur, had an understanding that allowed McArthur to use the car. In the early morning hours of March 23, 1980, the son and a friend went to a truckstop for breakfast. McArthur and another friend stayed in the car to play the radio. A police officer investigated the youths in the car for a possible curfew violation. McArthur, not wanting to receive a citation, decided to leave in the car. While McArthur was backing out, the officer grabbed the car in an attempt to stop it. The officer became caught on the car, and McArthur unwittingly drove over him while leaving the lot. At trial the jury found that McArthur was using the car with the son's implied permission and that plaintiff's insurance covered the incident. Defendant appealed, contending that implied consent to use the car did not exist as the son had told McArthur not to leave. The court found that a complete and unreasonable departure from intended use or an intentionally dangerous and wrongful operation could support a ruling that the use was outside the scope of permitted use. However, under the facts of this case, there was no absolute revocation of consent. The jury could find that the intervening circumstances required immediate action rendering the temporary prohibition on use inapplicable. Coverage was extended to McArthur. Mtn. W. Farm Bureau Mut. Ins. Co. v. Farmers Ins. Exch. Co., 209 M 467, 680 P2d 330, 41 St. Rep. 829 (1984).

Family Exclusion Clause Void: A parent is not immune from a negligence action brought against him by a child under the age of emancipation injured in the operation of a motor vehicle. Therefore, a family exclusion clause in an automobile insurance policy obtained under the mandatory liability insurance law is void and unenforceable because 61-6-301 requires motorists to carry insurance against loss resulting from liability imposed by law for injury suffered by any person. If the policy had been certified under the Motor Vehicle Safety-Responsibility Act, the exclusion clause would have been invalid because liability under that act is "absolute". Transamerica Ins. Co. v. Royle, 202 M 173, 656 P2d 820, 40 St. Rep. 12 (1983), contrasted in Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32, 54 St. Rep. 925 (1997).

Responsibility for Coverage: When two insurers have each obligated themselves to provide primary coverage, the coverage should be prorated between them in accordance with the limits of liability applicable in each policy. Truck Ins. Exch. v. Transport Indem. Co., 180 M 419, 591 P2d 188 (1979).

Right of Subrogation: There is no right of subrogation in favor of an insurance company against its own insured. This is true both as to the named insured and any party to whom coverage is extended under the terms of the policy. Truck Ins. Exch. v. Transport Indem. Co., 180 M 419, 591 P2d 188 (1979).

Punitive Damages for Intentional Act — Auto Insurance: Where the owner of a car, arriving on the scene of an accident involving his car driven by another with his permission, intentionally tampered with physical evidence at the scene and was thereafter found liable for punitive damages by a state court, but neither he nor the driver were liable for actual damages, under the policy in question the insurance company was not liable for either the punitive damages or attorney's fees. Lee v. St. Farm Mut. Auto. Ins. Co., 39 St. Rep. 1761 (D.C. Mont. 1982) (apparently not reported in Federal Supplement).

33-23-204. Definitions.

Compiler's Comments

2015 Amendment: Chapter 374 in (1)(b) after "bicycle" inserted "or a moped"; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendments — Composite Section — Coordination: Chapter 468 in (1)(b) inserted "an electric personal assistive mobility device, as defined in 61-1-101, and a motorized nonstandard vehicle, as defined in 61-1-101"; and made minor changes in style. Amendment effective April 28, 2005.

Chapter 542 in (1)(b) after "bicycle, as defined in" substituted "61-8-102" for "61-1-123"; and made minor changes in style. Amendment effective January 1, 2006.

Section 11, Ch. 468, L. 2005, a coordination section, amended this section in (1)(b) by changing "[section 1]" to "61-1-101".

Section 12, Ch. 468, L. 2005, a coordination section, amended this section in (1)(b) by changing "[section 2]" to "61-1-101".

1997 Amendment: Chapter 495 in definition of motor vehicle liability policy inserted "and all additional coverages included in or added to the policy by rider, endorsement, or otherwise, whether or not required under Title 61, including, without limitation, uninsured, underinsured, and medical payment coverages"; and made minor changes in style. Amendment effective May 2, 1997.

Applicability: Section 3, Ch. 495, L. 1997, provided: "[This act] [33-23-203 and 33-23-204] applies to all motor vehicle liability policies issued or renewed after [the effective date of this act]." Effective May 2, 1997.

Case Notes

Issue Preclusion and Claim Preclusion Inapplicable — Tort Claim in Motor Vehicle Accident Not Identical to Underinsured Motorist Contract Claim Against Insurer: The plaintiff recovered damages arising from injuries sustained in an automobile accident from the insurance company of the person that hit him in the full amount of the policy limit. The plaintiff also filed a separate underinsured motorist claim against his own insurance company. The plaintiff's insurance company, as the defendant in the second court action, moved for summary judgment, arguing that the underinsured motorist claim was barred by the doctrines of issue preclusion and claim preclusion because the plaintiff had recovered damages from another party. The District Court affirmed the motion and the Supreme Court reversed, holding that the defendant's underinsured motorist claim was not barred by either the doctrine of issue preclusion or claim preclusion. The related common-law doctrines of issue preclusion and claim preclusion, also known as collateral estoppel and res judicata, respectively, exist to preclude future litigation of a final judgment. Issue preclusion bars the same parties or their privies from relitigating issues in a second suit that is based on a "different cause of action". Claim preclusion bars a second suit involving the same parties or their privies based on the "same cause of action". The defendant's issue preclusion and claim preclusion arguments failed, because the personal injury issue decided in the prior adjudication was not identical to the contractual issue in the underinsured motorist claim. Reisbeck v. Farmers Ins. Exch., 2020 MT 171, 400 Mont. 345, 467 P.3d 557.

Antistacking Statutes Applicable to Specific Types of Coverage — Section Interpreted: In interpreting this section, the Supreme Court clarified three points regarding the statute: (1) it is directed at insurance against liability; (2) it is directed at insurance coverage that is required by law; and (3) it is concerned with liability insurance that is not only required but that is required by both parts 1 and 3 of Title 61, ch. 6. There are only three variations of coverage that meet these criteria, and those coverages are the per person, per vehicle, and property damage coverages. Underinsurance coverage and medical payment coverage do not qualify as insurance against liability but rather are excess or additional coverage designed to protect the first party insured; therefore, the prohibition against stacking in 33-23-203 (see 1997 amendment) does not apply to underinsurance and medical payment coverage. Farmers Alliance Mut. Ins. Co. v. Holeman, 278 M 274, 924 P2d 1315, 53 St. Rep. 904 (1996), distinguishing Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347 (1991). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

33-23-211. Limitations on basis for cancellation.

Compiler's Comments

1987 Amendment: In (1), before "policy", inserted "motor vehicle liability"; in (1)(b), after "operates", substituted "a motor vehicle" for "an automobile"; in (3), before "physical", substituted "motor vehicle" for "automobile"; at end of (4) inserted "of a motor vehicle liability policy"; and made minor changes in phraseology.

33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 339 near end of (1) after "not less than" increased time required for insurer to provide notice from 30 days to 45 days; in (2) in first sentence after "at least" increased time required for insurer to provide notice from 30 days to 45 days; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 380 deleted former (4) that read: "(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding $500 for each violation thereof"; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 10, Ch. 339, L. 2003, provided: "[This act] applies to policies effective on or after October 1, 2003."

1999 Amendment: Chapter 472 in (2) near end of second sentence after "less than" substituted "21" for "15"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1989 Amendment: Near end of (1), after "stating", substituted "the date on which" for "when" and substituted "the cancellation becomes effective" for "the date the cancellation shall become effective"; in (4), after "fine", deleted "of"; and made minor changes in punctuation.

1987 Amendment: In (1), before "liability", substituted "a motor vehicle" for "an auto"; and made minor changes in phraseology.

Case Notes

Insurer's Failure to Comply With Policy Terms Regarding Nonrenewal: The insurer argued that it was not liable to cover the plaintiff's damages on the grounds that the plaintiff had not paid the renewal premium on his policy. The Supreme Court held that the insurer had not sent written notice of its intent to cancel the policy as required by the policy terms and therefore the coverage was still in effect. Yovish v. United Serv. Auto. Ass'n, 243 M 284, 794 P2d 682, 47 St. Rep. 1224 (1990).

33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In first sentence, before "liability", substituted "a motor vehicle" for "an automobile".

33-23-214. Advance notice required for nonrenewal — exceptions.

Compiler's Comments

2003 Amendment: Chapter 339 in (1) in first sentence after "at least" increased time required for insurer to provide notice from 30 days to 45 days; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 10, Ch. 339, L. 2003, provided: "[This act] applies to policies effective on or after October 1, 2003."

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: Throughout section, before "policy", inserted "motor vehicle liability"; in (2) and (4)(b), before "designated", substituted "motor vehicle" for "automobile"; in (2) substituted "motor vehicle liability policy" for "automobile liability insurance policy"; and made minor changes in phraseology.

Case Notes

Written Notice to Insured to Pay Renewal Premium — Failure to Timely Pay — No Coverage for Subsequent Accident: The plaintiff sued the defendant insurance company for failing to provide him coverage for an automobile accident. The defendant argued that the plaintiff had not timely paid his renewal premium and therefore was not covered at the time of the accident. The District Court determined that the defendant had sent the plaintiff clear written notice of its intent to cancel the policy if the premium was not received by a certain date and that the plaintiff had not paid the premium by that date. On that basis, the District Court granted summary judgment in favor of the defendant. On appeal, the Supreme Court affirmed, ruling that the defendant properly canceled the policy prior to the accident based on the plaintiff's failure to pay the renewal premium in time. Finn v. Dakota Fire Ins. Co., 2015 MT 253, 380 Mont. 481, 356 P.3d 13.

Insurer's Failure to Comply With Policy Terms Regarding Nonrenewal: The insurer argued that it was not liable to cover the plaintiff's damages on the grounds that the plaintiff had not paid the renewal premium on his policy. The Supreme Court held that the insurer had not sent written notice of its intent to cancel the policy as required by the policy terms and therefore the coverage was still in effect. Yovish v. United Serv. Auto. Ass'n, 243 M 284, 794 P2d 682, 47 St. Rep. 1224 (1990).

33-23-215. No liability for statements in connection with cancellation or nonrenewal.

Compiler's Comments

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: In two places near beginning substituted "may" for "shall" and before "commissioner" deleted "insurance".

33-23-216. Retention and proof of notice.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: In (1), in two places, substituted "must" for "shall"; and made minor changes in phraseology.

33-23-221. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Applicability: Section 9, Ch. 304, L. 2015, provided: "[This act] applies to telematics agreements entered into or renewed on or after January 1, 2016."

33-23-222. Telematics agreement disclosures.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Applicability: Section 9, Ch. 304, L. 2015, provided: "[This act] applies to telematics agreements entered into or renewed on or after January 1, 2016."

33-23-223. Insurer obligations for telematics agreement — termination.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Applicability: Section 9, Ch. 304, L. 2015, provided: "[This act] applies to telematics agreements entered into or renewed on or after January 1, 2016."

33-23-224. Ownership of data.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Applicability: Section 9, Ch. 304, L. 2015, provided: "[This act] applies to telematics agreements entered into or renewed on or after January 1, 2016."

33-23-225. Application — exclusion.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Applicability: Section 9, Ch. 304, L. 2015, provided: "[This act] applies to telematics agreements entered into or renewed on or after January 1, 2016."

33-23-226. Rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Applicability: Section 9, Ch. 304, L. 2015, provided: "[This act] applies to telematics agreements entered into or renewed on or after January 1, 2016."

Part 3
Professional Liability

Part Case Notes

Insurer's Liability Not Subject to Canadian Tort Law: The plaintiff, relying on the policy's underinsurance clause, sought reimbursement from the insurer for injuries suffered in an automobile accident in Canada. The insurer argued that it was only liable for those damages allowed under the restrictive Canadian tort laws. The Supreme Court held that those damages that the plaintiff could not obtain reimbursement for under Canadian law could be recovered under the underinsurance clause because the policy was governed by the contract laws of the place where it was created and not by tort law. St. Farm Mut. Auto. Ins. Co. v. Estate of Braun, 243 M 125, 793 P2d 253, 47 St. Rep. 1043 (1990).

33-23-302. Cancellation or alteration of policy — increase of premium rates — written notice required.

Compiler's Comments

2003 Amendment: Chapter 339 near beginning after "insures" substituted "a person licensed in the practice of medicine, as defined in 37-3-102" for "a physician and surgeon"; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 10, Ch. 339, L. 2003, provided: "[This act] applies to policies effective on or after October 1, 2003."

1991 Amendment: In two places, after "cancel", inserted "or alter"; and made minor changes in style.

33-23-310. Medical malpractice insurance report by insurer.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 29, Ch. 157, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 3, Ch. 213, L. 2005, provided: "[This act] is effective July 1, 2005."

33-23-312. Cancellation or nonrenewal of all policies.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Applicability: Section 10, Ch. 339, L. 2003, provided: "[This act] applies to policies effective on or after October 1, 2003."

Part 4
Homes

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes.

Compiler's Comments

2017 Amendment: Chapter 396 deleted former (2) that read: "(2) Violation of this section is punishable under 33-1-104; and made minor changes in style." Amendment effective May 19, 2017.

Applicability: Section 35, Ch. 396, L. 2017, provided: "[This act] applies to acts committed on or after [the effective date of this act]." Effective May 19, 2017.

2005 Amendment: Chapter 263 in (1) at end after "renewing the policy" inserted exception clause and clause providing that notice may not be less than 20 days. Amendment effective October 1, 2005.

2003 Amendment: Chapter 339 near middle of (1) after "insured" increased time required for insurer to provide notice from 30 days to 45 days; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 10, Ch. 339, L. 2003, provided: "[This act] applies to policies effective on or after October 1, 2003."

CHAPTER 24
PROPERTY INSURANCE

Chapter Case Notes

Cost of Asbestos Removal Covered in Policy — Narrow Construction of Policy Exclusions: A "code exclusion" clause in a policy issued on a commercial building relieved insurer of any obligation to pay additional costs for the removal of debris from a fire-damaged building when the cost of removal was increased because of regulatory restrictions. Insurer claimed exemption when the cost of removal was increased because the debris contained asbestos, a substance subject to legal regulation. However, coverage exclusions are contrary to the fundamental protective purpose of an insurance policy and are therefore subject to a rule of narrow construction. Noting that the policy as drafted affirmatively extended coverage for debris removal and that the asbestos in question was considered debris as a result of fire damage, the Supreme Court held that insurer was liable contractually and that the exclusion was inapplicable. Farmers Union Mut. Ins. Co. v. Oakland, 251 M 352, 825 P2d 554, 49 St. Rep. 72 (1992), following Garnett v. Transamerica Ins. Serv., 800 P2d 656 (Idaho 1990).

Hearing Aid Protection Plan Considered Insurance: A hearing aid protection plan that provided for loss against physical damage to the hearing aid caused by external sources, such as theft, fire, accidental breakage, water, auto accident, and mysterious disappearance, and that specifically stated that it was separate and distinct from the factory warranty and did not cover repair service normally covered by the factory warranty was considered insurance within the meaning of Montana law. Ward v. Vibrasonic Laboratories, Inc., 236 M 314, 769 P2d 1229, 46 St. Rep. 387 (1989).

"Business Pursuit" — Definition: Montana has not adopted criteria for determining what is a business pursuit for purposes of an insurance policy clause excluding a business pursuit from coverage. The presence of a profit motive (not actual profit) is one characteristic of a business pursuit, and continually or regularly conducted activity may be a business pursuit even though it is not the primary occupation of the insured. In this case, insured's testimony that he had income and expenses relating to the pursuit and claimed them on his tax returns established a profit motive. Heggen v. Mtn. W. Farm Bureau Mut. Ins. Co., 220 M 398, 715 P2d 1060, 43 St. Rep. 475 (1986).

Business Pursuits — Steer-Roping Contest: Insured's policy on his ranch excluded business pursuits other than, among other things, farming. For 3 years he held three or four steer-roping contests a year in an arena he built. Nonprofessionals paid a fee and there was prize money, with insured keeping some of the fee money. Insured's own testimony showed he was regularly engaged in the contests for profit and thus was engaged in a business pursuit excluded from policy coverage. A summary judgment for insurer was therefore proper in insured's suit for failure to defend insured and pay an injured steer roper because there was no issue of material fact. Heggen v. Mtn. W. Farm Bureau Mut. Ins. Co., 220 M 398, 715 P2d 1060, 43 St. Rep. 475 (1986).

Part 1
General Provisions

33-24-101. Measure of the indemnity — rescission for fraud.

Case Notes

Property Insurance Not Intended to Give Insured Windfall — Actual Cash Value Used for Property Slated for Demolition: An insurer and an insured disputed whether an insurance policy should cover actual cash value or replacement costs for a building that was damaged by a fire. The District Court allowed replacement costs, even though portions of the building were slated for demolition prior to the fire. On appeal, the Supreme Court reversed the District Court and held that the insured should not receive replacement costs for the portion of the building that was slated for demolition, reasoning that replacement cost would give the insured far more than it had contemplated under the policy. Lincoln County Port Authority v. Allianz Global Risks US Ins. Co., 2013 MT 365, 373 Mont. 60, 315 P.3d 934.

Reliance by Insurer on Lesser Estimate of Repair Costs in Absence of Witnesses: Testimony relating to replacement value of a burned horse arena valued the property at $135,000 to $182,600. Witnesses for the insurer testified that they had obtained repair estimates for $25,000 to $98,000; however, none of the persons making the repair estimates were present at trial, and the insurer presented no witnesses to testify as to the value of the fire damage. On appeal, the Supreme Court found no basis in the record for the jury or court to determine whether the insurer was justified in relying on lesser estimates of cost of repair than the stated value in the policy because no witnesses testified to justify the lesser estimates. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

Deterioration Deduction: Where policy contained no valuation but insurer agreed to indemnify insured by either restoring the part destroyed to the condition it was in before the fire or paying insured a sum equal to cost of restoration, insured was entitled to judgment for the amount found by the appraisers as the cost of repairing the building and deduction from such amount for deterioration was unwarranted, under the facts presented. McIntosh v. Hartford Fire Ins. Co., 106 M 434, 78 P2d 82 (1938).

Judicial Review of Award: Courts should never interfere with an award in a fire insurance case except to prevent a manifest injustice or set it aside unless made without authority or the result of fraud, mistake, or of misfeasance or malfeasance of the appraisers, and where questioned, courts may consider the method by which the appraisers reached their decision even though the award may be fair on its face. McIntosh v. Hartford Fire Ins. Co., 106 M 434, 78 P2d 82 (1938).

Section Read Into Policy: Section 40-904, R.C.M. 1947 (predecessor to this section, since repealed), as to measure of indemnity was as much a part of the policy as though written into it. McIntosh v. Hartford Fire Ins. Co., 106 M 434, 78 P2d 82 (1938).

Measure of Indemnity: Indemnity is the basis or foundation of fire insurance law; unless there is a valuation given in the policy, the measure of indemnity is the expense, at the time the loss is payable, of replacing the thing insured or destroyed, in the condition in which it was at the time of the fire, not in excess of the amount specified in the policy. Lee v. Providence Wash. Ins. Co., 82 M 264, 266 P 640 (1928).

33-24-102. Insuring improvements — insurance equal to true value.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted "against loss or damage and the property insured is considered to be a total loss" for "against loss by fire, tornado, or lightning and the property insured shall be wholly destroyed" in the first sentence.

Case Notes

"Other Insurance" Clause Upheld to Deny Unjust Enrichment: Summers purchased a homeowner's policy from American and 2 years later purchased an additional policy from National without canceling his first policy. The home was subsequently burned, and Summers filed a claim with American. When American learned of the policy with National, National filed an interpleader action with the District Court and deposited its policy limit of $77,000, to which both American and Summers claimed entitlement. The American policy contained explicit language that the policy terminated upon the purchase of the subsequent policy by Summers. Relying on the public policy enunciated in automobile insurance stacking cases, Summers argued that the "other insurance" clause in American's policy was void as a matter of public policy. See

Bennett v. St. Farm Mut. Auto. Ins. Co., 261 M 386, 862 P2d 1146 (1993). The Supreme Court disagreed, holding that stacking automobile policies was allowed in order to ensure that victims receive adequate compensation but that in the case before it, Summers could not demonstrate that the compensation received from National did not fully cover his loss and therefore American did not have to pay the homeowner a second time for the loss and was only liable to Summers for the premiums collected after Summers obtained the National policy. The Supreme Court also disagreed with Summer's claim that pursuant to this section, the actual value of the property could not be ascertained and therefore the coverage of both policies should be taken as conclusively showing the value of the property. The Supreme Court stated that because it had already found that American's policy terminated automatically under the "other insurance" clause, when Summers purchased the second policy, this section was inapplicable. Nat'l. Cas. Co. v. Am. Bankers Ins. Co. of Fla., 2001 MT 28, 304 M 163, 19 P3d 223, (2001).

When Entire Amount of Policy Payable Despite Insurable Interest Clause: In order to protect their interest in the legal title to the property as security for the purchase price, Musselmans maintained an insurance policy on a house after selling it. The insurance policy purported to limit the Musselmans to their insurable interest stated in the contract for sale. However, the terms of the policy did not necessarily limit Musselmans to the unpaid balance of the contract. Rather, because Musselmans informed the insurance agent about the contract for sale, because the insurer's risk was not increased, and because premiums were not adjusted after the transaction, the insurer was required to pay the full amount stated under the policy. Musselman v. Mtn. W. Farm Bureau Mut. Ins. Co., 251 M 262, 824 P2d 271, 49 St. Rep. 50 (1992), citing Wilson v. Fireman's Ins. Co., 269 NW 2d 170 (Mich. 1978).

Applicability of Valued Policy Statute: This section determines automatically and conclusively the amount of loss recoverable for total loss and may obviate even the necessity of a proof of loss. An insurer may not create a question of total loss simply to compromise its duty to pay the full amount or to negotiate a lesser amount. The statutory duty to pay the full amount of applicable coverage in valued policies applies as well to a mortgagee under a loss payable clause to the extent of the mortgagee's lien. In this case, the court held that the insurer did not comply with 33-24-102, particularly with regard to the mortgagee bank, which was entitled to payment regardless of any claim of arson against the insured. Therefore, when an insurer faces a claim under its policy for damages to an improvement on real property, the freedom of the insurer to evaluate the claim and determine its merit does not include the amount payable if the cost of the damages exceeds the value of the improvement. In that event, the loss is total and this section applies. The insurer retains the freedom, however, to reasonably determine if the loss has merit as a claim. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

Evidence of Nonprosecution for Arson in Applying Valued Policy Statute: An insurer objected to closing arguments on the ground that evidence of nonprosecution for arson in cases for insurance proceeds was not admissible. The issue arose because of the provision in 33-24-102 which provides that the valued policy law applies without criminal fault on the part of the insured. The Supreme Court held that it was pertinent to the insured's case that the jury, in considering whether 33-24-102 was applicable, should also have known whether the insured was without criminal fault; otherwise, under its terms, the statute would not apply. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

Standard of Lawful Basis for Refusal to Decline Payment of Claim — Standard Not Met by Reliance on Inadmissible Evidence: An insurer must meet the standard of a lawful basis for refusal to decline payment of an insured's claim for an insured's loss. Reliance by the insurer on inadmissible evidence of arson by the insured in declining payment of an insured's loss does not meet the standard of a lawful basis for refusal of the insured's claim. Britton v. Farmers Ins. Group, 221 M 67, 721 P2d 303, 43 St. Rep. 641 (1986).

Mobile Home on Foundation — Improvements on Real Property:

A trailer house set up for occupancy and connected to a cesspool, a light plant, and oil and propane tanks was an improvement on real property within the meaning of this section. Staggers v. USF&G Co., 159 M 254, 496 P2d 1161 (1972).

Mobile home that rested on permanent foundation with its wheels removed, had two additional rooms bolted to it, and was connected with sewerline was an "improvement on real property" as used in this section. Meccage v. Spartan Ins. Co., 156 M 135, 477 P2d 115 (1970).

Future Improvements — Not a Valued Policy: When both parties to a fire insurance policy intend that policy cover property plus added value of work on building to be done subsequently, the policy is "open" or "unvalued", not "valued". Century Corp. v. Phoenix of Hartford, 157 M 16, 482 P2d 1020 (1971).

Partial Payment — Acceptance Not Satisfaction of Valued Amount: Where valued policy fixed valuation of mobile home at $3,000, insured who signed proof of loss calling for payment of $1,500 by the insurer and subsequently accepted check in that amount was not barred from claiming additional $1,500 since claim was a liquidated demand that was not settled by partial payment. Meccage v. Spartan Ins. Co., 156 M 135, 477 P2d 115 (1970).

Total Loss — Destruction of Character of Property: Mobile home was wholly destroyed under this section even though some articles were salvaged and frame could be used as farm or ranch trailer, since mobile home's identity and specific character were lost. Meccage v. Spartan Ins. Co., 156 M 135, 477 P2d 115 (1970).

33-24-103. Specific valuation — loss equal to insured value.

Compiler's Comments

2005 Amendment: Chapter 469 in (2) at end after "offsets" inserted "except for the selected deductible in the policy"; and made minor changes in style. Amendment effective October 1, 2005.

1981 Amendment: Inserted "total" before "loss" in (2); deleted subsection (3) relating to the procedure for varying computations of loss.

Case Notes

When Entire Amount of Policy Payable Despite Insurable Interest Clause: In order to protect their interest in the legal title to the property as security for the purchase price, Musselmans maintained an insurance policy on a house after selling it. The insurance policy purported to limit the Musselmans to their insurable interest stated in the contract for sale. However, the terms of the policy did not necessarily limit Musselmans to the unpaid balance of the contract. Rather, because Musselmans informed the insurance agent about the contract for sale, because the insurer's risk was not increased, and because premiums were not adjusted after the transaction, the insurer was required to pay the full amount stated under the policy. Musselman v. Mtn. W. Farm Bureau Mut. Ins. Co., 251 M 262, 824 P2d 271, 49 St. Rep. 50 (1992), citing Wilson v. Fireman's Ins. Co., 269 NW 2d 170 (Mich. 1978).

Alternate Methods of Computation of Loss: Although the catchphrase for a policy clause entitled "basis of loss adjustment" is in large type, when words in the body of the clause describing the actual method of computation of loss are in the smallest type appearing in the policy, those descriptive words are not set forth in a type of "prominent size" within the meaning of this section. Nelson v. Ins. Co. of N. Am., 36 St. Rep. 249 (D.C. Mont. 1979) (apparently not reported in Federal Supplement).

"Valued" Policy: When the specific value of an item was stated in the insurance certificate under the column "amount of insurance" and the premium was calculated on the basis of specific value, there may be no deductions or offsets allowed on the amount of recovery and the policy is a "valued" policy under subsection (1). Nelson v. Ins. Co. of N. Am., 36 St. Rep. 249 (D.C. Mont. 1979) (apparently not reported in Federal Supplement).

33-24-104. Tax lien on insured property destroyed by fire.

Compiler's Comments

Applicability: Section 5, Ch. 447, L. 1989, provided: "[Section 2] applies to insurance contracts entered into on or after October 1, 1989."

Part 2
Portable Electronics Insurance Act

Part Compiler's Comments

Effective Date: Section 12, Ch. 406, L. 2013, provided: "[This act] is effective August 1, 2013."

Part 3
Self-Storage Insurance Act

33-24-301. Short title — purpose.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

33-24-302. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

33-24-303. Licensure of operators — rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

33-24-304. Brochures and materials explaining self-storage coverage.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

33-24-305. Authority of operators.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

33-24-306. Application for operator license — fees.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

33-24-307. Suspension or revocation of operator license.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

CHAPTER 25
MONTANA TITLE INSURANCE ACT

Chapter Compiler's Comments

Source: Chapter 519, L. 1985, was based in part on the Model Title Insurance Act of the National Association of Insurance Commissioners (NAIC).

Chapter Case Notes

Title Insurance — No Duty Owed on Preliminary Commitment — Common Law Inapplicable: In July 2019, the plaintiffs filed an action in District Court alleging negligence, professional negligence, and negligent misrepresentation by the defendants' title companies when conducting the title examination of the plaintiffs' land. The District Court held that the Montana Title Insurance Act did not impose a duty with respect to the offer of title insurance in a preliminary commitment, thus foreclosing the plaintiffs' claims. On appeal, the Supreme Court affirmed, reasoning that the practical importance of the preliminary commitment to real estate transactions is well taken, but imposing duties on that process as a matter of common law was inapplicable when the Legislature had acted otherwise through legislation. Phipps v. Old Republic Nat'l Title Ins. Co., 2021 MT 152, 404 Mont. 336, 489 P.3d 507.

Liability for Issuance of Conflicting Title Insurance Policies — Due Diligence Standard Applicable to Title Examination Resulting in Loss: Based on information in Realty Title Company's (Realty's) own records and abstract plant, a reasonably diligent inquiry would have disclosed that a survey had been completed and filed of record for purposes of defining the tract of land covered by the Turks' policy. When Realty later insured Weibert for the same tract, it violated the rule in Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982). Realty's own record and abstract plant put it on sufficient notice of a possible defect in Weibert's title, and Realty was therefore obligated to inquire further prior to issuing a title insurance policy insuring the same tract. Failing twice to do so, Realty breached the obligation under the agency contract to exercise due diligence in the title examination and was liable for the subsequent loss. Old Republic Nat'l Title Ins. Co. v. Realty Title Co., 1999 MT 69, 294 M 6, 978 P2d 956, 56 St. Rep. 286 (1999).

Reimbursement by Title Insurance Company on Property Redeemed — Buyer Not Entitled to Purchase Price From Seller — Subrogation: A buyer received payment equivalent to the purchase price from a title insurance company pursuant to a policy held by the seller. He later sought to recover the purchase price from the seller after the title was redeemed by the original owners. The lower court applied the principle of subrogation in determining that the claim of the buyer was subrogated to the title insurance company, and that since the buyer had been compensated, it would not be just to permit him to pursue the seller for the purchase price. McDonald v. Grassle, 228 M 25, 740 P2d 1122, 44 St. Rep. 1312 (1987).

Expert Testimony Required for Title Insurance Company Standard of Care: In 1975, plaintiff negotiated to sell his property and a commitment for title insurance was ordered from defendant.

The defendant issued a title commitment, but it contained no reference to a quiet title action or decree whereby plaintiff and his father had determined separate ownership of various parcels. In 1977, a judgment against plaintiff's father was entered and a Writ of Execution was levied on the father's and plaintiff's property. Plaintiff then brought an action to amend the judgment in the quiet title action nunc pro tunc to reflect the separate ownership. Plaintiff then brought this action to recover costs of the nunc pro tunc action. Plaintiff presented no expert testimony as to the standard of care of a title insurance company. Defendant appealed from an adverse judgment, contending the absence of expert testimony failed to establish a prima facie case of negligence. The Supreme Court, relying on Prosser, Law of Torts, 4th Ed. (1971), and Hill v. Squibb & Sons, 181 M 199, 592 P2d 1383 (1979), held that title examination is complex and intricate and beyond the common understanding of lay persons. Plaintiff must produce expert testimony to establish the standard of care required of a title insurance company. Without such testimony a prima facie case of negligence was not established. Doble v. Lincoln County Title Co., 215 M 1, 692 P2d 1267, 42 St. Rep. 128 (1985), distinguished in Old Republic Nat'l Title Ins. Co. v. Realty Title Co., 1999 MT 69, 294 M 6, 978 P2d 956, 56 St. Rep. 286 (1999).

Title Commitment — Nature: A title commitment is in a somewhat different category than a title insurance policy. Ordinarily a commitment is ordered by the seller for the purpose of exhibiting it to the buyer as a representation of the quality of the title seller expects to sell to the buyer. A title commitment naturally contemplates a search by the title insurer of the chain of title, an opinion by an expert of what the search reveals, a guaranty that the search was accurate, and that the title commitment expresses the quality of the title of the seller as shown by the record. The person who seeks a title insurance commitment expects to obtain a professional title search, as well as a professional legal opinion as to the condition of the title and a guaranty that the title expressed in the commitment will be insured to the extent of the policy coverage. A title commitment does not propose that the title company will insure the property but rather that the title company will insure the title. The title insurer does not agree to clear the title, but rather by its commitment, the title company agrees to afford coverage in a title policy later to be issued insuring the title according to its commitment. Malinak v. Safeco Title Ins. Co. of Idaho, 203 M 69, 661 P2d 12, 40 St. Rep. 301 (1983).

Title Commitment — Insurer's Duty: Title insurers contended they were absolved from liability to seller by virtue of the following clause contained in a title insurance commitment issued seller: "This Commitment is further conditioned by the conditions and stipulations and exclusions from coverage of the basic form of the policy or policies committed to be insured. The examination of the public records made by Company as to the land set out in schedule A was made wholly for determining the insurability of the title to said land and not for reporting on the condition of the record." The foregoing condition of the title commitment is, to say the least, ambiguous. It would be difficult for a trained lawyer, not to speak of a layman, to distinguish the difference between the "insurability of the title" after examination of the public records and the "condition of the record". But we do not rely on the possible ambiguity in the clause to determine this issue. It is within the expectations of the parties that the title commitment will accurately reflect the insurability of the title, or the condition of the public record, as the case may be, with respect to that title. We find a duty on the part of the title insurer when it issues a title commitment that later forms the basis for a title insurance policy, particularly where the seller relies on the title commitment, to base its title commitment and report upon a reasonably diligent title search of the public records. A breach of that duty would constitute negligence. Malinak v. Safeco Title Ins. Co. of Idaho, 203 M 69, 661 P2d 12, 40 St. Rep. 301 (1983).

Insurer's Liability — Effect of Insured's Knowledge of Defects: Seller's possible knowledge of defects in his title was not pertinent at the summary judgment motion stage of his suit against his title insurer in which he claimed negligence and breach of warranty in carrying out a title search. Barring fraud on his part or possible comparative negligence in conveying title when a reasonably prudent person might not do so, his knowledge of the status of his title was irrelevant with respect to the liability of the title insurer. Malinak v. Safeco Title Ins. Co. of Idaho, 203 M 69, 661 P2d 12, 40 St. Rep. 301 (1983).

Lay Insured's Knowledge of Easements — Effect: Although insured under title insurance policy had actual knowledge of the existence of irrigation ditches on his land, as a layman with no special knowledge of easements, he was entitled to reasonably rely on the specialized knowledge of the insurers to reveal and explain any title defects and their consequences, including irrigation ditch rights and easements. Insured's actual knowledge was not a defense to his action against insurers for damages for failure to disclose irrigation ditch rights and easements. Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982).

Water Rights Exclusion From Coverage — Application to Irrigation and Ditch Rights: Title insurance policy exclusion of water rights did not apply to irrigation ditch rights and easements. Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982).

Liability for Failure to Defend Suit Against Insured: Adjoining landowner sued insured for interference with his easement rights, title insurance companies refused to defend, insured hired his own counsel, the suit was settled, and adjoining landowner again sued insured when insured refused to abide by the settlement. The insurers again refused to defend. The policy obligated insurers to defend any litigation founded upon a defect, lien, encumbrance, or other matter insured against. Insurers had failed to disclose and insure against the easements, though they were contained in the title records. The insurers acted in bad faith in refusing to defend the first suit but not in refusing to defend the second suit, since it arose from insureds' refusal to abide by the settlement in the first suit. Insurers were liable to insured for his costs in defending the first suit, and punitive damages could be imposed for failure to defend. Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982).

Coverage — Errors in Title Examination: Risks usually covered by title insurance policies include errors in the title examination, including the negligent failure to note a title defect. A title insurance company owes its clients the duty of conducting a title search with reasonable care. Thus a warranty deed in the chain of title of insured under title insurance policy which recited that the grant was "subject to rights established by irrigation ditch" put insurers sufficiently on notice, and a duty arose to further determine the nature of the rights. The rights should have been brought to insured's attention and either insured against or excluded from the coverage. Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982). The Lipinski rule, requiring due diligence in title examination, was applied in Old Republic Nat'l Title Ins. Co. v. Realty Title Co., 1999 MT 69, 294 M 6, 978 P2d 956, 56 St. Rep. 286 (1999).

Unilateral Material Alteration of Contract: After issuance of title insurance policy, insured signed and returned to insurers an agreement that "the second parties [the title companies] shall not be liable for any claim or claims brought directly by first party [insured] as a result of the presence of either of the two ditches on his lands, which ditches were the subject of the above referred to lawsuit", which was a suit relating to ditch rights and easements that had been settled. The insurers had failed to disclose the existence of the ditch rights and easements. Before signing the agreement, the companies inserted "see insert below" and inserted "except that the payment hereunder by [the title companies] shall be deemed to be in full compensation for any reduction in the value of the insured property of [the insured] caused by the existence of the two ditches". In insured's suit against the companies for failure to defend suits against him by the owner of ditch rights and easements, the companies could not use the altered agreement to avoid paying damages caused by their failure to discover and disclose the ditch rights and easements. It was a material alteration which insured had not agreed to. Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982).

Insurers' Failure to Disclose Easements — Insured's Pecuniary Loss — Damages: Landowner suffered a substantial pecuniary loss when his title insurers failed to inform him of ditch rights and easements that landowner had to pay $46,000 to purchase in order to remove the defects to his title. The $46,000 was the measure of damages where title insurance companies were liable to landowner up to the face amount ($25,000) of the title insurance policy for failure to discover and disclose or insure against the existence of the easements, and landowner was properly awarded his damages up to the face amount of the policy, minus $2,500 the companies had paid in a settlement of part of the easement rights. Lipinski v. Title Ins. Co., 202 M 1, 655 P2d 970, 39 St. Rep. 2283 (1982). The Lipinski rule, requiring due diligence in title examination, was applied in Old Republic Nat'l Title Ins. Co. v. Realty Title Co., 1999 MT 69, 294 M 6, 978 P2d 956, 56 St. Rep. 286 (1999).

Chapter Attorney General's Opinions

Title Insurance Insufficient to Satisfy Certificate of Title Requirement: A title insurance policy does not satisfy the certificate of title requirement of 76-3-612. The purpose of the certificate of title requirement is to inform the governing body of the status of the title. Title insurance is inadequate for this purpose since it does not purport to detail the status of the title but merely constitutes an agreement to defend title if defects should be alleged in the future. 38 A.G. Op. 48 (1979).

Part 1
General Provisions

Part Case Notes

Unconstitutional Discrimination: Court struck down former 33-25-103 (see Ch. 84, L. 1983, for text) as it discriminated in favor of those agents who were writing title insurance on the basis of legal opinions on July 1, 1961, and against those licensed agents who later attempted to do so and thereby was in violation of the guarantee of equal protection of the laws and unconstitutional. Mont. Land Title Ass'n v. First Am. Title & Escrow of Billings, 167 M 471, 539 P2d 711 (1975).

33-25-105. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 30, Ch. 157, L. 2023. Amendment effective October 1, 2023.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent and substituted references to title insurance producer for references to title agent. Amendment effective January 1, 1990.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

Case Notes

Title Insurance — No Duty Owed on Preliminary Commitment — Common Law Inapplicable: In July 2019, the plaintiffs filed an action in District Court alleging negligence, professional negligence, and negligent misrepresentation by the defendants' title companies when conducting the title examination of the plaintiffs' land. The District Court held that the Montana Title Insurance Act did not impose a duty with respect to the offer of title insurance in a preliminary commitment, thus foreclosing the plaintiffs' claims. On appeal, the Supreme Court affirmed, reasoning that the practical importance of the preliminary commitment to real estate transactions is well taken, but imposing duties on that process as a matter of common law was inapplicable when the Legislature had acted otherwise through legislation. Phipps v. Old Republic Nat'l Title Ins. Co., 2021 MT 152, 404 Mont. 336, 489 P.3d 507.

33-25-106. Application.

Compiler's Comments

1989 Amendment: Substituted references to title insurance producer for references to title agent. Amendment effective January 1, 1990.

33-25-111. Abstracts of title distinguished from title insurance policy and preliminary report.

Case Notes

Title Insurance — No Duty Owed on Preliminary Commitment — Common Law Inapplicable: In July 2019, the plaintiffs filed an action in District Court alleging negligence, professional negligence, and negligent misrepresentation by the defendants' title companies when conducting the title examination of the plaintiffs' land. The District Court held that the Montana Title Insurance Act did not impose a duty with respect to the offer of title insurance in a preliminary commitment, thus foreclosing the plaintiffs' claims. On appeal, the Supreme Court affirmed, reasoning that the practical importance of the preliminary commitment to real estate transactions is well taken, but imposing duties on that process as a matter of common law was inapplicable when the Legislature had acted otherwise through legislation. Phipps v. Old Republic Nat'l Title Ins. Co., 2021 MT 152, 404 Mont. 336, 489 P.3d 507.

Part 2
Powers and Duties of Title Insurers

33-25-201. Escrow, closing, or settlement services — title indemnification — maintenance of accounts — maintenance of nominal or short-term accounts — rules.

Compiler's Comments

1995 Amendment: Chapter 250 at end of (1) extended internal reference from subsection (3) through subsection (9); at beginning of (2)(b) inserted exception clause; inserted (3) concerning pooled, interest-bearing depository account for nominal trust funds; inserted (4) concerning establishment of account with financial institution; inserted (5) concerning Montana Land Title Association; inserted (6) concerning remittance of interest and dividends; inserted (7) concerning records of remittance and statements; inserted (8) concerning distribution of interest on trust accounts program; and made minor changes in style.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent and substituted references to title insurance producer for references to title agent. Amendment effective January 1, 1990.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

Administrative Rules

ARM 6.6.2202 Escrow, closing, or settlement services.

33-25-202. Sharing of rate proceeds.

Compiler's Comments

1989 Amendment: Substituted "insurance producers" for "agents"; and before "commissions" substituted "accept" for "exchange business and share". Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Administrative Rules

ARM 6.6.2203 Rebates and inducements.

33-25-211. Guaranty fund — investments.

Compiler's Comments

1999 Amendment: Chapter 304 at end of (1) substituted "this section" for "33-2-851"; inserted (2) concerning investment in title plant, equipment, and abstract companies; inserted (3) concerning investments not credited against guaranty fund or unearned premium reserve; inserted (4) concerning exclusion of title plant and equipment from financial condition determination; and made minor changes in style. Amendment effective July 1, 1999.

33-25-212. Rates filed with commissioner.

Compiler's Comments

2007 Amendment: Chapter 399 in (3) near middle before "charge" inserted "quote or"; and made minor changes in style. Amendment effective May 3, 2007.

1981 Amendment: Deleted "risk" before "rates" in the first sentence of (1); added the last sentence in (1) requiring rates to be all-inclusive and accompanied by supporting data; deleted former subsection (4) which was a transition of compliance in 1961.

33-25-213. Limitations on authority.

Compiler's Comments

1989 Amendment: Substituted references to title insurance producer for references to title agent. Amendment effective January 1, 1990.

33-25-214. Underwriting standards — record retention.

Compiler's Comments

2007 Amendment: Chapter 399 in (3) near middle after "issue" substituted "any title insurance product" for "an owner's title insurance policy". Amendment effective May 3, 2007.

1989 Amendment: Throughout section substituted "insurance producer" for "agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Administrative Rules

ARM 6.6.2201 Liens, encumbrances, and standards of insurability.

Case Notes

Title Insurance — No Duty Owed on Preliminary Commitment — Common Law Inapplicable: In July 2019, the plaintiffs filed an action in District Court alleging negligence, professional negligence, and negligent misrepresentation by the defendants' title companies when conducting the title examination of the plaintiffs' land. The District Court held that the Montana Title Insurance Act did not impose a duty with respect to the offer of title insurance in a preliminary commitment, thus foreclosing the plaintiffs' claims. On appeal, the Supreme Court affirmed, reasoning that the practical importance of the preliminary commitment to real estate transactions is well taken, but imposing duties on that process as a matter of common law was inapplicable when the Legislature had acted otherwise through legislation. Phipps v. Old Republic Nat'l Title Ins. Co., 2021 MT 152, 404 Mont. 336, 489 P.3d 507.

33-25-215. Report of claims.

Compiler's Comments

1989 Amendment: Substituted references to title insurance producer for references to title agent. Amendment effective January 1, 1990.

33-25-216. Notice of issuance of mortgagee policy.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to title insurance producer for references to title agent. Amendment effective January 1, 1990.

Part 3
Regulation by Commissioner of Insurance

33-25-301. Refusal, suspension, or revocation of title insurance producer's license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 31, Ch. 157, L. 2023. Amendment effective April 19, 2023.

2001 Amendment: Chapter 227 in (1) near beginning of introductory clause after "refuse to license" inserted "an applicant or renew the license of" and after "title insurance producer's license" substituted "or may fine a title insurance producer or applicant, after notice and opportunity for a hearing, if the commissioner finds" for "if, after a hearing held after notice as required in 33-17-1001, he finds"; in (1)(d) substituted "in conducting affairs as a title insurance producer, used coercive practices or demonstrated financial irresponsibility" for "in the conduct of his affairs under his title insurance producer's license, used coercive practices or shown himself to be financially irresponsible"; at end of (3) deleted "to exercise its powers"; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendment: Throughout section substituted "insurance producer('s)" for "agent('s)"; and in (3) substituted "person" for "firm, corporation, or other business entity". Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

33-25-302. Disapproval of agency contracts.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: Throughout section substituted references to insurance producer for references to agent; and made minor changes in phraseology. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Part 4
Prohibited Practices — Penalties

33-25-401. Prohibited practices — referrals — splitting charges — exemptions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Throughout section substituted "insurance producer" for "agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

Administrative Rules

ARM 6.6.2203 Rebates and inducements.

33-25-403. Prohibited practices — producer and associates — prohibition of favored insurance producer or insurer.

Compiler's Comments

1989 Amendment: In two places substituted "insurance producer" for "agent"; and made minor changes in phraseology. Amendment effective January 1, 1990.

Saving Clause: Section 71, Ch. 713, L. 1989, was a saving clause.

Severability: Section 72, Ch. 713, L. 1989, was a severability clause.

CHAPTER 26
SURETYSHIP

Part 1
Surety Insurance

33-26-101. Corporations as sureties.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Bank Not Organized as Corporate Surety Company: Talcott Construction brought an action to foreclose on its construction lien on certain condominiums. Mountain Bank filed an irrevocable letter of credit with the District Court on behalf of the defendant, P&D Land Enterprises, 10 days after the action was initiated, and the court entered an order dissolving Talcott's lien. Talcott argued that the lower court erred in finding that the bank met the statutory definition of a corporate surety company. The Supreme Court found that based on the purpose clause of the bank's articles of incorporation, it had been organized to conduct the business of banking and not for making, guaranteeing, or becoming a surety upon bonds. James Talcott Constr., Inc. v. P&D Land Enterprises, 261 M 260, 862 P2d 395, 50 St. Rep. 1313 (1993).

Applicability to Licensed Insurance Business That Issues Suretyship Contract: A business entity licensed under Montana law to transact the business of insurance, which issues as part of its business a contract of suretyship guaranteeing the performance of an underlying contract in Montana, is transacting a class of insurance business under Montana law and is subject to statutes regarding unfair claims settlement practices as set out in Title 33, ch. 18, part 2. The entity is liable in a tort action for violations of 33-18-201 for damages beyond the express terms of the suretyship contract. K-W Indus. v. Nat'l Surety Corp., 231 M 461, 754 P2d 502, 45 St. Rep. 762 (1988).

Insolvent Surety: A surety company that is insolvent can execute an undertaking on appeal in the absence of an action for making up deficiency in its assets. The failure of a surety to an undertaking to justify on exceptions to his sufficiency, or even his insolvency, furnishes no ground for the dismissal of the appeal. King v. Pony Gold Min. Co., 24 M 470, 62 P 783 (1900).

33-26-102. Requisites of undertakings or bonds of individuals.

Case Notes

Affidavit — Substantial Compliance: The affidavit required by this section to accompany an undertaking must comply substantially with the statutory provisions. Whitcomb v. Beyerlein, 84 M 470, 276 P 430 (1929).

Appeal Perfected by Filing of Undertaking: Appeal becomes effective upon the filing of an undertaking, accompanied by the required affidavits, subject to the appellee's right to test the responsibility of the sureties. Bush v. Baker, 46 M 535, 129 P 550 (1913).

33-26-103. Rights of surety insurer to give bond.

Case Notes

Damages Awarded to Former Employee for Sexual Harassment and Retaliation — Appellant's Supersedeas Bond With Surety Not Adequate — No Creation of Security Relationship Separate From Relationship That Already Existed Between Appellant and Surety — No Good Cause to Stay Proceedings to Enforce Judgment — Affirmed on Appeal. NorVal Elec. Co-op, Inc. v. Lawson, 2022 MT 62, 408 Mont. 159, 507 P.3d 157.

Courts Mandated to Approve Bonds: The courts are mandated to approve all bonds offered by those commercial sureties properly authorized to do business as commercial sureties in the State of Montana. Wilshire Ins. Co. v. Carrington, 570 P2d 301 (1977) (apparently not reported in Montana Reports).

33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-26-108. Rulemaking authority for surety insurers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 592, L. 2023. Amendment effective May 18, 2023.

Severability: Section 9, Ch. 592, L. 2023, was a severability clause.

Effective Date — Applicability: Section 27(1), Ch. 427, L. 2003, provided that this section is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

Administrative Rules

Title 6, chapter 6, subchapter 60, ARM Bail bonds.

CHAPTER 27
INDEPENDENT LIABILITY FUND

Part 1
General Provisions

33-27-101. Short title.

Compiler's Comments

2021 Amendment: Chapter 503 near beginning after "Sections 15-30-2118" deleted "15-30-2141"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Preamble: The preamble to Ch. 564, L. 1987, provided: "WHEREAS, the current crisis in the liability insurance industry has made it increasingly difficult, and often prohibitively expensive, for many small businesses in Montana to obtain comprehensive and adequate liability insurance; and

WHEREAS, some small businesses have found it impossible, in the current insurance market, to obtain coverage for their major areas of risk, particularly in connection with product liability and extra hazardous risks; and

WHEREAS, many small businesses have had no choice but to purchase inadequate insurance or to go without insurance and, therefore have indiscriminately exposed themselves and all of their business assets to liability; and

WHEREAS, the general public would benefit from a system that would assure that money or assets are available to answer any justifiable claims made against small businesses in Montana; and

WHEREAS, the general public would benefit from a system that would encourage each small business within the State of Montana to minimize its exposure to liability claims."

33-27-102. Purpose.

Compiler's Comments

2021 Amendment: Chapter 503 near beginning after "purpose of 15-30-2118" deleted "15-30-2141"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

33-27-103. Definitions.

Compiler's Comments

2021 Amendment: Chapter 503 near beginning of introductory clause after "As used in 15-30-2118" deleted "15-30-2141"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2013 Amendment: Chapter 268 in definition of fiscal year substituted "corporate income tax, or alternative corporate income tax" for "corporate license tax, or corporate income tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

33-27-104. Rules.

Compiler's Comments

1987 Statement of Intent: The statement of intent attached to Ch. 564, L. 1987, provided: "A statement of intent is required for this bill in order to provide a guideline for regulation of independent liability funds. In sections 5 [33-27-112] and 17 of this bill, the legislature grants to the commissioner of insurance general rulemaking authority to do the following:

(1) supply forms for the registration of small business independent liability funds;
(2) ascertain the inviolability of each independent liability fund;
(3) ascertain the financial health of each independent liability fund;
(4) initiate sanctions against independent liability funds that are not secure or viable; and
(5) make any other rules and regulations required to carry out the purposes of the Independent Liability Fund Act." The reference to "section 17" was inadvertently not changed when two new sections were added to the introduced bill. It should read "section 19", which is codified as 33-27-104.

Administrative Rules

Title 6, chapter 6, subchapter 26, ARM Independent liability funds.

33-27-115. Composition of independent liability fund.

Compiler's Comments

1999 Amendment: Chapter 304 substituted reference to chapter 12 for reference to chapter 2, part 8; and made minor changes in style. Amendment effective July 1, 1999.

33-27-118. Taxation of independent liability fund contributions.

Compiler's Comments

2015 Amendment: Chapter 377 substituted "33-2-705(2)(a)" for "33-2-705(2)". Amendment effective April 30, 2015.

Preamble: The preamble attached to Ch. 377, L. 2015, provided: "WHEREAS, the application of Montana's premium tax rate of 2.75% and licensing fee of $1,900, together with the application of other states' retaliatory tax, fees, and licensing laws, unnecessarily impedes the growth and financial stability of Montana-domiciled legal professional liability insurers by requiring these Montana-domiciled insurers to pay higher taxes and fees to another state under the laws of the other state; and

WHEREAS, the imposition by other states of higher taxes and fees on Montana-domiciled legal professional liability insurers than are applied to those states' own domestic insurance companies that do business in their state unfairly discriminates against and hinders the growth and stability of these Montana-domiciled legal professional liability insurers and is contrary to the best interests of Montana; and

WHEREAS, the purpose of this act is to aid in the protection, growth, and stability of Montana-domiciled legal professional liability insurers that have a principal business office located in Montana and employ Montana residents but that derive substantial net direct premiums on account of policies covering subjects or risks located, resident, or to be performed in states or jurisdictions outside of Montana; and

WHEREAS, the state of Montana will benefit by supporting the growth and stability of Montana-domiciled legal professional liability insurance companies that have a principal business office located in Montana, employ Montana residents, and issue legal professional liabili

Retroactive Applicability: Section 5, Ch. 377, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014."

33-27-119. Termination of independent liability fund.

Compiler's Comments

2001 Amendment: Chapter 111 in (1) after "fund" substituted "may terminate the independent liability fund by" for "ceases its operations, either voluntarily or involuntarily, it shall"; deleted former (1)(a) that read: "(a) any statute of limitations applicable to operations of that particular small business"; in (1)(a)(ii) decreased "15 years" to "5 years"; inserted (1)(b) providing option of independent liability policy by substituting an equivalent insurance policy plus five times the amount of deductible for any legally required period or 5 years, whichever is longer; inserted (2) requiring small business to deposit estimated premium for equivalent policy in trust account and requiring account to be used to purchase liability insurance for required period; at end of first sentence in (3) inserted "as provided in subsection (1)"; and made minor changes in style. Amendment effective October 1, 2001.

CHAPTER 28
CAPTIVE INSURANCE COMPANIES

Chapter Compiler's Comments

Effective Date: Section 19, Ch. 298, L. 2001, provided: "[This act] [Title 33, chapter 28] is effective July 1, 2001."

Chapter Administrative Rules

Title 6, chapter 6, subchapter 68, ARM Formation and regulation of captive insurance companies.

Part 1
General Provisions and Licensing

33-28-101. Definitions.

Compiler's Comments

2019 Amendment: Chapter 223 in definition of captive insurance company after "protected cell captive insurance company" deleted "incorporated cell captive insurance company"; deleted definition that read: ""Incorporated cell" means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company"; deleted definition that read: ""Incorporated cell captive insurance company" means a protected cell captive insurance company that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity"; in definition of protected cell at end inserted "All protected cells must be incorporated"; in definition of protected cell captive insurance company inserted "(e) that is incorporated or formed as a limited liability company"; and made minor changes in style. Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

2017 Amendment: Chapter 151 in definition of business entity in (a) after "limited liability company" deleted "partnership, limited partnership, limited liability partnership"; and in definition of organizational document after "articles of organization" deleted "a partnership agreement"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 229 in definition of special purpose captive insurance company at end inserted "or is formed by, on behalf of, or for the benefit of a political subdivision of this state". Amendment effective April 10, 2015.

Chapter 335 throughout section substituted "authorized" for "licensed"; in definition of association inserted (d) relating to limited liability company insurers; and made minor changes in style. Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2011 Amendment: Chapter 75 in definition of captive insurance company near middle inserted references to incorporated and special purpose captive insurance companies; inserted definitions of incorporated cell and incorporated cell captive insurance company; in definition of participant before "share" deleted "pro rata"; in definition of protected cell near middle after "in which" substituted language regarding identified pool of assets and liabilities segregated and insulated from remainder of assets and liabilities for "assets are maintained for one or more participants"; inserted definitions of protected cell assets, protected cell liabilities, and special purpose captive insurance company; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 518 in definition of affiliated company after "member" deleted "organization"; in definition of association near middle after "proprietorships" substituted "or business entities" for "corporations, partnerships, limited liability companies, or associations"; in definition of association captive insurance company near middle substituted "members" for "member organizations of an association" and at end inserted "of members"; inserted definitions of business entity, captive reinsurance company, captive risk retention group, controlled unaffiliated business entity, mutual insurer, organizational document, protected cell captive insurance company, and sole proprietorship; in definition of captive insurance company near middle substituted "protected cell" for "sponsored"; in definition of industrial insured group inserted (b) concerning captive risk retention group; substituted member for member organization as defined term and substituted "or business entity" for "corporation, partnership, or association"; in definition of parent at beginning substituted "sole proprietorship, business entity" for "corporation, partnership" and near end before "captive" deleted "pure"; in definition of participant near beginning substituted "sole proprietorship or business entity" for "entity, as enumerated in 33-28-304" and near middle substituted "protective cell" for "sponsored"; in definitions of participant contract, protected cell in two places, and sponsor substituted "protected cell" for "sponsored"; in definition of pure captive insurance company at end inserted "and controlled unaffiliated business entities"; deleted definition of sponsored captive insurance company that read: ""Sponsored captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or licensed under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 383 in definition of association in introductory clause after "1 year" inserted reference to waiver of 1-year requirement by commissioner and inserted (c) relating to all subscribers of association captive insurance company formed as reciprocal insurer; inserted definitions of branch business, branch captive insurance company, and branch operations; in definition of captive insurance company after "association captive insurance company" inserted "sponsored captive insurance company"; inserted definitions of cash equivalent, excess workers' compensation insurance, foreign captive insurance company, participant, participant contract, protected cell, sponsor, and sponsored captive insurance company; and made minor changes in style. Amendment effective April 18, 2003.

33-28-102. Certificates of authority — lines of business — definition.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 60 in (2)(d) near beginning substituted "designates a registered agent" for "appoints a registered agent" and at end substituted "33-1-605 and 33-1-606" for "33-1-603". Amendment effective July 1, 2019.

Chapter 223 in (3)(a) after "receiving a certificate of authority" deleted "a captive insurance company shall" and after "formed as a business entity" inserted "a captive insurance company shall"; deleted former (3)(a)(ii) concerning reciprocal insurer (see 2019 Session Law for former text); inserted (3)(a)(iii) regarding provision of a statement to the commissioner with certain information; inserted (3)(e) requiring filing of certain information by a reciprocal insurer with the commissioner; in (4)(a) after "Each captive insurance company" inserted "individual series of members as defined in 35-8-102 of a limited liability company, and protected cell"; in (4)(b) after "each captive insurance company" inserted "individual series of members as defined in 35-8-102 of a limited liability company, and protected cell" and at end deleted former last sentence that read: "Individual series of members as defined in 35-8-102 of a limited liability company formed as a special purpose captive insurance company, incorporated protected cells, and unincorporated protected cells are not required to pay the registration or renewal fee under this subsection (4)(b)"; and made minor changes in style. Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

2015 Amendment: Chapter 335 in (1) and (3)(a) substituted "certificate of authority" for "license"; in (2)(a) substituted "a certificate of authority under this section" for "a license authorizing it to do insurance business in this state"; in (4)(a) near middle following "application" deleted "for license"; in (4)(b) near middle following "shall pay a" deleted "license" and inserted third sentence relating to individual series of members; and in (5) in two places substituted "certificate" for "license". Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2011 Amendments — Composite Section: Chapter 75 inserted (1)(d) regarding special purpose captive insurance company; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 227 in (1)(f) substituted "participants" for "participant affiliated companies and controlled unaffiliated business entities"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

2009 Amendment: Chapter 28 in (1) near middle after "income insurance" inserted "surety insurance, marine insurance"; in (2)(b) after "directors" inserted "board of managing members"; in (3)(a)(i) at end substituted "business entity" for "corporation"; in (3)(a)(i)(A) near beginning substituted "organizational documents" for "charter and bylaws" and after "oath of" substituted "an officer of the business entity" for "its president and secretary"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 518 in (1) near beginning after "permitted by its" deleted "articles of incorporation, charter, or other" and near end after "coverage" inserted "or a group health plan"; in (1)(a) at end inserted "and controlled unaffiliated business entities"; in (1)(c) at end substituted "members or affiliated companies of members" for "member organizations of its association or their affiliated companies"; in (1)(d) after "company" inserted "or a branch captive insurance company"; in (1)(d)(iii) near beginning after "coverage" inserted "or a group health plan" and after "company" substituted "or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies" for "is a pure captive insurance company"; inserted (1)(d)(iv) concerning writing workers' compensation insurance; in (1)(e) at beginning substituted "protected cell" for "sponsored" and at end substituted "participant affiliated companies and controlled unaffiliated business entities" for "participants"; inserted (2)(d) concerning registered agent; in (3)(c)(iv) near middle substituted "members" for "member organizations"; in (3)(d), (3)(d)(ii), and (3)(d)(iii) substituted "protected cell" for "sponsored"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 383 in (1) after "provide" substituted reference to property insurance, casualty insurance, life insurance, disability income insurance, and health insurance coverage for "property and casualty insurance"; in (1)(d)(iii) after "provide" substituted reference to health insurance coverage unless pure captive insurance company for "health or disability insurance or life insurance"; deleted former (1)(d)(iv) that read: "(iv) provide workers' compensation insurance in any manner or form"; inserted (1)(e) limiting risks that sponsored captive insurance company may insure; in (2)(b) after "directors" inserted reference to reciprocal insurer's subscribers' advisory committee; inserted (3)(a)(i) referring to captive insurance company formed as corporation; inserted (3)(a)(ii) referring to captive insurance company formed as reciprocal insurer; in (3)(b) after "subsection" substituted "(3)(a)" for "(3)(a)(ii)"; inserted (3)(d) requiring information to be filed with commissioner by sponsored captive insurance company; and made minor changes in style. Amendment effective April 18, 2003.

Administrative Rules

Title 6, chapter 6, subchapter 68, ARM Formation and regulation of captive insurance companies.

33-28-104. Minimum capital surplus — letter of credit.

Compiler's Comments

2019 Amendment: Chapter 223 in (3) at end substituted "or a bank chartered by another state if that state-chartered bank is approved by the commissioner" for "and approved by the commissioner"; and made minor changes in style. Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

2015 Amendment: Chapter 335 in (1) substituted "certificate of authority" for "license"; and in (3) following "letter of credit" inserted "on a form prescribed by the commissioner and". Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2013 Amendment: Chapter 169 in (1)(b) after "company" inserted "including a captive risk retention group"; and made minor changes in style. Amendment effective April 9, 2013.

2011 Amendment: Chapter 75 in (1)(c) at end substituted "$500,000" for "$750,000"; inserted (1)(d) regarding special purpose captive insurance company; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 271 in (1)(f) near end after "captive" substituted "insurance" for "reinsurance"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 518 in (1)(d) in first sentence substituted "protected cell" for "sponsored" and at end substituted "$500,000" for "$1 million" and inserted second sentence concerning protected cell captive insurance company that does not insure risks; inserted (1)(e)(ii) concerning minimum capital and surplus; inserted (1)(f) concerning captive reinsurance company; deleted former (4) and (5) that read: "(4) Despite the requirements of subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of $1 million.

(5) In the case of a branch captive insurance company, security in an amount not less than the minimum capital and surplus required in this section must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 383 inserted (1)(d) and (1)(e) establishing minimum capital and surplus requirements for sponsored captive insurance companies and branch captive insurance companies, respectively; in (3) after "cash" inserted "cash equivalent"; inserted (4) establishing minimum capital and surplus requirements for captive insurance companies organized as reciprocal insurers; inserted (5) requiring that in case of branch captive insurance company, minimum security be held jointly by commissioner and branch captive insurance company; and made minor changes in style. Amendment effective April 18, 2003.

33-28-105. Formation of captive insurance companies.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 117 in (4)(a) in first sentence substituted "the organizers shall file a copy of the organizational documents with the commissioner" for "and before the organizational documents are transmitted to the secretary of state, the organizers shall file a copy of the proposed organizational documents and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state" and near beginning of second sentence substituted "filings" for "petition"; in (4)(b) near beginning substituted "approve the filings" for "issue a certificate", before "organizational documents" deleted "proposed", and at end substituted "organizational documents" for "draft of the organizational documents and shall return the draft to the proposed organizers, together with a written statement explaining the refusal"; in (4)(c) substituted text for former text that read: "If the commissioner issues a certificate and approves the draft organizational documents, the commissioner shall forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set with the secretary of state as required by the applicable law and one set with the commissioner"; in (8)(a) near middle of first sentence substituted "request that commissioner find" for "petition and request that the commissioner issue a certificate that finds" and near beginning of second sentence substituted "request" for "petition"; in (8)(b) substituted "approve or reject the request" for "approve the petition and issue the certificate or reject the petition"; in (10)(a) near beginning of first sentence after "company shall" deleted "petition and"; and made minor changes in style. Amendments were rendered void by Ch. 223. Amendment effective July 1, 2019.

Chapter 223 deleted former (4) (see 2019 Session Law for former text); in (5)(b) at end substituted "is not required to have a manager who is a resident of this state, but the company must maintain a board of directors, of which one board member must be a resident of the state" for "must have a minimum of five managers"; deleted former (8) (see 2019 Session Law for former text); in (8) after "Except as provided in 33-28-111" deleted "and 33-28-306"; in (9)(a) after "the foreign captive insurance company shall" deleted "petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the authorization and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company shall" and at end deleted "after the commissioner's certificate is issued"; and made minor changes in style. Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

2017 Amendments — Composite Section: Chapter 151 in (2)(d) inserted "manager-managed"; and in (9) inserted "33-28-111 and". Amendment effective October 1, 2017.

Chapter 304 in (2)(c) inserted "except that the requirements of 33-5-201(1) do not apply"; in (8)(c)(i) in first sentence inserted "except 33-5-201(1)"; and made minor changes in style. Amendment effective May 4, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendment: Chapter 335 in (6)(a), (6)(b), and (6)(c) inserted second sentence requiring a minimum of five directors; and in (10)(a) in first sentence near end substituted "the authorization and maintenance" for "the licensing and maintenance". Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2009 Amendment: Chapter 28 inserted (2)(d) to include a limited liability company as an association captive insurance company or an industrial insured captive insurance company; in (3) at end substituted "must be incorporated or organized by at least one incorporator or organizer who is a resident of this state" for "may not have less than three incorporators, at least one of whom must be a resident of this state"; in (4)(a)(ii) at end after "directors" inserted "or managing members"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 518 substituted (1) concerning captive insurance company formed or organized as business entity for former text that read: "A pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders"; in (2)(b) near end substituted "members" for "member organizations"; in (4)(a) in two places substituted "business entity" for "corporation" and "organizational documents" for "articles of incorporation" and near beginning after "secretary of state" substituted "the organizers" for "the incorporators"; in (4)(a)(i) at end substituted "organizers" for "incorporators"; in (4)(b) in two places substituted "organizational documents" for "articles of incorporation" and near end substituted "organizers" for "incorporators"; in (4)(c) in three places substituted "organizational documents" for "articles of incorporation" and in two places substituted "organizers" for "incorporators" and in second sentence near middle after "set" deleted "of articles of incorporation"; inserted (6)(b) concerning captive insurance company formed as limited liability company; inserted (6)(c) concerning reciprocal insurer; in (7)(a) near beginning after "corporation" inserted "or another business entity" and after "law" inserted "or the laws governing other business entities"; in (7)(b) after "law" inserted "or the laws governing other business entities"; inserted (8)(d) concerning captive risk retention group; in (9) near beginning inserted reference to chapter 3 and after "dissolutions" deleted "and redomestications"; in (10)(a) in second sentence near middle after "company" substituted "shall" for "may"; inserted (10)(b) concerning application of ERISA to branch captive insurance company; inserted (10)(c) concerning principal place of business of branch captive insurance company; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 205 in (9) near middle inserted "voluntary dissolutions". Amendment effective October 1, 2005.

Chapter 469 in (8)(c) deleted former third sentence that read: "If a reciprocal insurer is determined to be subject to other provisions of Title 33, chapter 5, the other provisions of chapter 5 are not applicable to a reciprocal captive insurance company formed under this chapter unless those provisions of chapter 5 are expressly made applicable to captive insurance companies." Amendment effective October 1, 2005.

2003 Amendment: Chapter 383 in (1) after "pure captive insurance company" inserted reference to sponsored captive insurance company; inserted (2)(c) allowing organization as reciprocal insurer; substituted (4)(a) relating to captive insurance company formed as corporation and requiring filing of proposed articles of incorporation and petition for certificate of finding for former (4)(a) that read: "(a) A captive insurance company shall deliver to the commissioner a draft of its proposed articles of incorporation. The commissioner shall examine the proposed articles of incorporation, and if the commissioner finds that the proposed articles comply with this chapter and the applicable provisions of Title 33, the commissioner shall approve, in writing, the draft articles"; in (4)(b) after "commissioner" inserted "does not issue a certificate or"; in (4)(c) in first sentence at beginning inserted reference to issuance of certificate and approval of draft articles of incorporation and after "forward" inserted reference to certificate; in (7)(a) after "company" inserted "formed as a corporation"; inserted (8) relating to filing requirements for captive insurance company formed as reciprocal insurer; at beginning of (9) inserted exception clause; inserted (10) relating to requirement for branch captive insurance company; and made minor changes in style. Amendment effective April 18, 2003.

33-28-106. Dividends.

Compiler's Comments

2007 Amendment: Chapter 518 in (1) near end after "surplus" deleted "in excess of the limitations set forth in 33-2-1114". Amendment effective October 1, 2007.

33-28-107. Reports and statements.

Compiler's Comments

2019 Amendment: Chapter 223 in (2)(b) at beginning substituted "A captive insurance company, other than a captive risk retention group" for "A pure captive insurance company, branch captive insurance company, or industrial insured captive company, excluding captive risk retention groups"; and in (2)(b)(ii) after "premium tax return, a" deleted "pure" and after "captive insurance company" deleted "or industrial insured insurance company". Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

2011 Amendments — Composite Section: Chapter 75 in (2)(a) in first sentence substituted "April 1" for "March 1" and inserted second sentence regarding report from captive risk retention group; in (2)(b)(i) substituted "90 days" for "60 days"; and in (2)(b)(ii) and in (2)(d) near beginning substituted "April 1" for "March 1". Amendment effective October 1, 2011.

Chapter 227 deleted former (4)(b) that read: "(b) The commissioner may waive the RBC report required in 33-2-1903 for a captive risk retention group that files a report or statement pursuant to subsection (4)(a) or for a captive risk retention group that was formed in the last 2 years"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

2009 Amendment: Chapter 28 inserted (4)(b) allowing waiver of the RBC report; in (4)(c) after "filings" inserted "in subsection (4)(a)"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 518 in (2)(a) at beginning inserted exception clause; inserted (2)(b) concerning application for time for filing required reports; inserted (3) concerning confidentiality of financial statements; inserted (4) concerning reports and statements of captive risk retention groups; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 383 inserted (2)(c) relating to information required to be filed by branch captive insurance companies. Amendment effective April 18, 2003.

Administrative Rules

ARM 6.6.6811 Annual audit.

33-28-108. Examinations and investigations.

Compiler's Comments

2021 Amendment: Chapter 55 in (1)(a) at beginning inserted exception clause, in middle substituted "commissioner may examine" for "commissioner shall examine", at end after "advisable" deleted "but no less frequently than every 5 years", and deleted last sentence that read: "This section does not apply to a captive insurance company operating under a certificate of dormancy as provided in 33-28-401"; inserted (1)(b) concerning the review of captive risk retention groups; and made minor changes in style. Amendment effective March 8, 2021.

2017 Amendment: Chapter 304 in (1)(a) inserted last sentence concerning nonapplicability of the section to dormant captive insurance companies. Amendment effective May 4, 2017.

2015 Amendments — Composite Section: Chapter 335 in (7) near beginning substituted "authorization" for "licensure". Amendment effective April 28, 2015.

Chapter 348 in (4)(b) substituted "public records" for "public writings" and substituted "2-6-1002" for "2-6-101". Amendment effective October 1, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

Section 72, Ch. 348, L. 2015, was a severability clause.

2011 Amendment: Chapter 227 in (1)(a) substituted current language for "At least once in 3 years, or more frequently if the commissioner considers it prudent, the commissioner or some competent person appointed by the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter.

(b) The commissioner, upon application and in the commissioner's discretion, may enlarge the 3-year period to 5 years if the captive insurance company is:

(i) subject to a comprehensive annual audit during the 5-year period of a scope satisfactory to the commissioner; and

(ii) the audit is conducted by independent auditors approved by the commissioner"; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

2007 Amendment: Chapter 518 inserted (4)(b) concerning captive risk retention group reports; in (6) substituted reference to 33-28-107(2)(d) for reference to 33-28-107(2)(c); inserted (7) concerning licensure of branch captive insurance company; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 383 inserted (5) relating to captive insurance companies and branch captive insurance companies. Amendment effective April 18, 2003.

33-28-109. Suspension or revocation of certificate of authority.

Compiler's Comments

2017 Amendment: Chapter 151 inserted (3) regarding reinstatement after suspension in certain cases. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendment: Chapter 335 in (1) and (2) substituted "certificate of authority" for "license". Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

33-28-111. Captive mergers.

Compiler's Comments

2019 Amendment: Chapter 223 inserted (3) regarding an association captive insurance company or industrial insured group converting to or merging with a reciprocal insurer, including requirements for a conversion or merger plan approved by the commissioner. Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

Effective Date: Section 58(1), Ch. 151, L. 2017, provided that this section is effective October 1, 2017."

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

33-28-120. Captive insurance regulatory and supervision account.

Compiler's Comments

2021 Amendment: Chapter 420 in (3)(a) at beginning substituted "Twenty percent" for "Five percent". Amendment effective October 1, 2021.

2017 Special Session Amendment: Chapter 6 in (2) at beginning inserted "Subject to legislative fund transfer"; and made minor changes in style. Amendment effective December 15, 2017, and terminates June 30, 2019.

Severability: Section 26, Ch. 6, Sp. L. November 2017, was a severability clause.

Effective Date: This section is effective October 1, 2007.

Part 2
Operations

33-28-201. Tax on premiums collected.

Compiler's Comments

2019 Amendment: Chapter 223 in (4) after "by a captive insurance company" inserted "other than a protected cell captive insurance company"; and made minor changes in style. Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

2015 Amendment: Chapter 335 in (3)(a)(i) inserted reference to subsection (3)(a)(iii); in (3)(a)(ii) in five places substituted "authorized" for "licensed"; inserted (3)(a)(iii) relating to prorating tax; deleted former (3)(b) that read: "(b) Aggregate taxes to be paid by a captive insurance company under this section may not exceed $100,000 in any year"; inserted (3)(c) relating to limited liability companies formed as special purpose captive insurance companies; inserted (4) relating to aggregate taxes; and made minor changes in style. Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2009 Amendment: Chapter 28 in (1)(b)(ii) after "0.3% on" substituted "each subsequent dollar collected" for "the next $20 million"; deleted former (1)(b)(iii) and (1)(b)(iv) that read: "(iii) 0.2% on the next $20 million; and

(iv) 0.075% on each subsequent dollar collected"; in (3)(a) at beginning inserted exception clause; inserted (3)(a)(ii) regarding quarterly proration of tax in the first year that a captive insurance company is licensed; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 518 inserted (3)(c) concerning requirements for each protected cell in protected cell captive insurance company; in (5)(b) in two places substituted "insurers" for "corporations"; inserted (7) concerning calculation of tax on annual basis; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 205 inserted (3)(b) relating to maximum aggregate taxes paid by a captive insurance company; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 383 inserted (6) relating to taxation of branch business of branch captive insurance company. Amendment effective April 18, 2003.

33-28-202. Legal investments.

Compiler's Comments

2013 Amendment: Chapter 169 in (3) in first sentence substituted "Any" for "Only a pure" and substituted "loans to any of its affiliates" for "loans to its parent company or affiliates" and at beginning of second sentence after "Loans" deleted "to a parent company or any affiliate". Amendment effective April 9, 2013.

2011 Amendment: Chapter 75 in (2) inserted "or protected cell captive insurance company". Amendment effective October 1, 2011.

2009 Amendment: Chapter 28 inserted (1)(c) allowing the commissioner to approve an investment of up to 20% of admitted assets when a captive insurance company's admitted assets total less than $5 million; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 518 in (1) in first sentence near middle after "company" inserted "and a captive risk retention group" and at beginning of second sentence deleted "Notwithstanding any other provision of this title"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 469 in (1) in first sentence after "contained in" deleted "33-2-532, 33-2-533"; and made minor changes in style. Amendment effective October 1, 2005.

33-28-205. Exemption from compulsory organizations.

Compiler's Comments

2007 Amendment: Chapter 518 near middle after "member" deleted "organization". Amendment effective October 1, 2007.

33-28-206. Rules.

Compiler's Comments

2015 Amendment: Chapter 335 in second sentence substituted "authorization" for "licensing". Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2007 Amendment: Chapter 518 near middle after "investigations" inserted "redomestications, captive risk retention groups, risk-based capital and holding company systems, letters of credit, risks managed by pure captive insurance companies, standards to ensure that parent or affiliated companies are able to exercise control of the risk management function of any controlled unaffiliated entities to be insured by the pure captive insurance companies, the use of deductible reimbursement with workers' compensation"; and made minor changes in style. Amendment effective October 1, 2007.

33-28-207. Applicable laws.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 356, L. 2023. Amendment effective October 1, 2023.

2019 Amendments — Composite Section: Chapter 60 in (1)(d) substituted "33-1-604 through 33-1-606" for "33-1-603". Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

2015 Amendment: Chapter 335 inserted (1)(f) relating to failure to timely file an annual statement; and made minor changes in style. Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2011 Amendment: Chapter 227 in (1)(d) inserted "33-1-311"; in (1)(e) after "part 6" inserted exception clause; inserted (4) relating to captive risk retention groups; and made minor changes in style. Amendment effective April 20, 2011.

Severability: Section 25, Ch. 227, L. 2011, was a severability clause.

2009 Amendment: Chapter 28 in (1)(a) at beginning after "definitions of" inserted "commissioner and department provided in 33-1-202"; in (1)(d) inserted reference to 33-3-431; inserted (1)(e) applying the definition related to dissolution and liquidation to captive insurance companies; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 518 in (1)(a) near end after "coverage" inserted "and group health plans"; in (1)(d) near beginning inserted "33-1-603"; deleted former (2)(b) that read: "(b) a captive insurance company that is a risk retention group from complying with the provisions of Title 33, chapter 11"; inserted (3) concerning captive insurance company that writes health insurance; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 205 in introductory clause inserted "following apply to captive insurance companies"; inserted (1)(b) relating to the limitation in 33-2-705; inserted (2)(b) regarding a captive insurance company complying with Title 33, chapter 11; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment — Coordination: Chapter 383 in (1) near beginning inserted references to definitions of property insurance, casualty insurance, life insurance, health insurance coverage, and disability income insurance and near end after "33-18-201" inserted "33-18-203, 33-18-205"; and made minor changes in style. Amendment effective April 18, 2003.

Pursuant to sec. 17, Ch. 383, L. 2003, a coordination section, in (1), relating to definition of disability income insurance, substituted reference to [section 5 of House Bill No. 145] (33-1-235) for reference to [section 7] (void).

Administrative Rules

ARM 6.6.6821 Limit of risk.

Part 3

Protected Cell Captive Insurance Companies

Part Compiler's Comments

Effective Date: Section 18, Ch. 383, L. 2003, provided that this part is effective on passage and approval. Approved April 18, 2003.

33-28-301. Protected cell captive insurance company.

Compiler's Comments

2019 Amendment: Chapter 223 in (1) at end deleted "which may be incorporated or unincorporated"; in (2)(a)(iii) at end deleted "or "incorporated cell""; in (2)(a)(v) in second sentence near beginning after "Each" deleted "incorporated", in second sentence at end substituted "that the limit on maximum yearly aggregate taxes paid in 33-28-201 does not apply" for "for the application of 33-28-201", and in third sentence near middle after "a protected cell captive insurance company, each" deleted "incorporated"; in (2)(c) in first sentence after "creation of a protected cell" substituted "creates" for "does not create" and after "protected cell captive insurance company" deleted "unless the protected cell is an incorporated cell"; in (12)(b)(iii) after "if that state-chartered bank is" substituted "approved by" for "acceptable to"; and made minor changes in style. Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

2015 Amendment: Chapter 335 in (2) and (11) substituted "authorized" for "licensed". Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2013 Amendment: Chapter 169 in (11) after "state" inserted "or approved by the commissioner"; in (12) inserted introductory clause concerning reinsurance; and made minor changes in style. Amendment effective April 9, 2013.

2011 Amendment: Chapter 75 in (1) at end inserted "which may be incorporated or unincorporated"; in (2) after "of this chapter" substituted "is" for "may establish and maintain one or more protected cells to insure risks of one or more participants" and at end deleted "conditions"; deleted former (2)(a) that read: "(a) The shareholders of the protected cell captive insurance company must be limited to its participants and sponsors"; inserted (2)(a) through (2)(f) regarding regulation of protected cell captive insurance companies; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 518 throughout section substituted "protected cell captive insurance company" for "sponsored captive insurance company". Amendment effective October 1, 2007.

33-28-302. Qualification of sponsors.

Compiler's Comments

2015 Amendment: Chapter 335 in three places substituted "authorized" for "licensed". Amendment effective April 28, 2015.

Saving Clause: Section 12, Ch. 335, L. 2015, was a saving clause.

Severability: Section 13, Ch. 335, L. 2015, was a severability clause.

2011 Amendment: Chapter 75 at end inserted reference to any other person approved by commissioner; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 518 in first sentence near beginning after "sponsor of a" substituted "protected cell" for "sponsored". Amendment effective October 1, 2007.

33-28-303. Delinquency of protected cell captive insurance company.

Compiler's Comments

2007 Amendment: Chapter 518 in introductory clause and in (2) in two places substituted "protected cell" for "sponsored". Amendment effective October 1, 2007.

33-28-304. Participants in protected cell captive insurance companies.

Compiler's Comments

2011 Amendment: Chapter 75 in (1) at beginning substituted "An individual or" for "A"; and deleted former (4) that read: "(4) A participant shall insure only its own risks through a protected cell captive insurance company." Amendment effective October 1, 2011.

2007 Amendment: Chapter 518 in (1), (2), (3), and (4) substituted "protected cell" for "sponsored"; in (1) at beginning before "business entity" deleted "association, corporation, limited liability company, partnership, trust, or other"; and made minor changes in style. Amendment effective October 1, 2007.

33-28-310. Investments by protected cell captive insurance companies.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 4
Dormant Captive Insurers

33-28-401. Dormant captive insurer.

Compiler's Comments

2019 Amendment: Chapter 223 in (3)(a)(iii) after "members as defined in 35-8-102" inserted "or protected cell as defined in 33-28-101"; and made minor changes in style. Amendment effective July 1, 2019.

Saving Clause: Section 12, Ch. 223, L. 2019, was a saving clause.

Severability: Section 13, Ch. 223, L. 2019, was a severability clause.

Effective Date: Section 6, Ch. 304, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

CHAPTER 30
HEALTH SERVICE CORPORATIONS

Chapter Compiler's Comments

Not Codified: Section 40-5923, R.C.M. 1947, providing a 1-year grace period, was not codified in the MCA as temporary. This clause has not been repealed and is still valid law. Citation may be made to sec. 23, Ch. 319, L. 1975.

Part 1
General Provisions

33-30-101. Definitions.

Compiler's Comments

2021 Amendment — Code Commissioner Correction: Chapter 262 in definition of health service corporation in (a) near end after "reimbursement" substituted "for the preceding care and services" for "therefor" and inserted (b) exempting direct patient care agreements established pursuant to 50-4-107; in definition of health services near middle after "psychologist" inserted "services"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 262 in (1)(b) referred to "[section 1]". However, the apparent intent of the original bill was to refer to sec. 2, Ch. 262, and the Code Commissioner has changed the final statutory reference in (1)(b) accordingly.

1991 Amendment: In definition of health services inserted reference to licensed acupuncturist services.

Applicability: Section 3, Ch. 362, L. 1991, provided: "[This act] applies to disability insurance policies issued or renewed and to health service corporations organized or operating in this state on or after October 1, 1991."

1987 Amendment: In (2) inserted "licensed professional counselor" in list of health service providers.

1983 Amendment: In (2), after "nursing services" inserted "licensed social worker or psychologist".

Not Codified: Section 40-5901(4), R.C.M. 1947, defining "commissioner" was not recodified in the MCA because it was redundant with same definition at 33-1-202. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 319, L. 1975. See 1-2-208, stating that amendment to codified provision is given effect over uncodified provision.

Attorney General's Opinions

Health Service Corporations Versus Insurance Companies: In a pre-1987 amendment decision, the Attorney General held that Blue Cross and Blue Shield were nonprofit corporations pursuant to section 15-1401, R.C.M. 1947 (since repealed), and its successor provisions and operated nonprofit plans as set forth in 33-30-101. Therefore, they were not health insurance corporations under the Montana Insurance Code but rather were a special legislative creation, health service corporations, exempt from the Insurance Code. 37 A.G. Op. 151 (1978).

33-30-102. Application of chapter — construction of other related laws.

Compiler's Comments

2021 Amendment: Chapter 501 in (1) inserted reference to Title 33, chapter 2, part 24. Amendment effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

2019 Amendments — Composite Section: Chapter 25 in (1) near end inserted reference to Title 33, chapters 10 and 12; and made minor changes in style. Amendment effective January 1, 2020.

Chapter 415 in (1) in last sentence inserted reference to 33-2-714. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

2017 Amendments — Composite Section: Chapter 151 in (1) inserted reference to Title 33, chapter 2, part 13, and Title 33, chapter 3, part 6. Amendment effective October 1, 2017.

Chapter 231 in (1) inserted reference to Title 33, chapter 2, part 23; and made minor changes in style. Amendment effective April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

Section 12, Ch. 231, L. 2017, was a severability clause.

2015 Amendment: Chapter 428 in (1) near end inserted reference to Title 33, chapter 32; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

2009 Amendment: Chapter 271 in (1) near middle after "33-3-308" inserted "33-3-401"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 380 in (1) inserted reference to Title 33, chapter 2, part 19; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 in (1) in second sentence in series of statutory references inserted "33-2-1212", "33-3-307", and "33-3-431". Amendment effective October 1, 2001.

1997 Amendment: Chapter 531 near middle inserted reference to 33-3-308; and made minor changes in style.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 379 in (1) substituted "33-17-101; Title 33, chapter 17, parts 2 and 10 through 12; Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111; and 33-3-701 through 33-3-704" for "33-17-212 through 33-17-214 and chapters 1, 15, 18, 19, and 22, except 33-22-111"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1987 Amendment: In (1) inserted last sentence listing other provisions of Title 33 that apply to health service corporations. Amendment effective January 1, 1988.

Attorney General's Opinions

Payment for Services of Psychologists: In a pre-1983 amendment opinion, the Attorney General held that Montana Physicians Service (Blue Shield) and Blue Cross of Montana could pay for services rendered by psychologists but were not required to do so. 37 A.G. Op. 151 (1978).

33-30-103. Purposes of health service corporation.

Compiler's Comments

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

33-30-105. Examination of health service corporation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

1987 Amendment: Inserted (7) requiring payment for examinations. Amendment effective January 1, 1988.

1981 Amendment: Inserted (2) requiring an examination every 4 years.

Statement of Intent: The statement of intent attached to HB 385 (Ch. 452, L. 1981) provided: "A statement of intent is required for House Bill 385 to explain the purpose of the legislature in approving the increase in the fee for filing of annual report by health service corporations. This bill raises the fee for each individual or family unit covered, from 20 cents to 50 cents, to finance the performance audits required on each health service corporation at least once every 4 years and to carry out other duties imposed on the Insurance Department. The Insurance Department estimates it will require one additional FTE plus a necessary appropriation to cover additional related costs such as actuarial fees, travel expenses, office space, benefits and office equipment for the FTE. The intention of the legislature is to collect the increase in the fee only if the additional FTE and appropriation are authorized."

33-30-107. Annual statement.

Compiler's Comments

2015 Amendment: Chapter 63 in (4) substituted "certificate of authority" for "license". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2003 Amendment: Chapter 380 inserted (3)(c) requiring health service corporation to pay all fees and costs of preparing and submitting filings. Amendment effective October 1, 2003.

2001 Amendment: Chapter 227 in (1) in first sentence substituted "national association of insurance commissioners'" for "N.A.I.C." and in second sentence after "in accordance with" substituted "the annual statement instructions and the Accounting Practices and Procedures Manual of the national association of insurance commissioners" for "the national association of insurance commissioners' annual statement instructions". Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 in (1) near middle of first sentence after "year on" substituted "the N.A.I.C. health blank form" for "form No. 13 N.A.I.C." and inserted third sentence requiring that an actuarial opinion accompany the statement; in (3)(a) in first sentence after "electronic" deleted "diskette", at beginning of second sentence after "The" deleted "filing" and after "statement" substituted "electronic filing" for "diskette", and at beginning of third sentence after "The" deleted "filing" and after "dates for" substituted "submission of the quarterly statement electronic filing" for "the other three quarterly statements"; and in (3)(a)(i), (3)(a)(ii), and (3)(a)(iii) after "quarter" substituted "filing" for "statement". Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 531 inserted (4) allowing the Commissioner to suspend or revoke a health service license or impose fines.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1995 Amendment: Chapter 379 in (1), at beginning of first sentence, inserted "On or before March 1 of each year", after "statement" inserted "for the preceding year", and after "on" deleted "a form containing substantially the same information as that contained in" and inserted second sentence concerning completing the statement in accordance with national annual statement instructions; inserted (2) concerning information in a health service corporation's statement; inserted (3) concerning the filing of electronic diskette versions of annual and quarterly financial statements by health service corporations; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-30-108. Certificate required.

Compiler's Comments

2015 Amendment: Chapter 63 throughout section substituted "certificate of authority" for "license". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2001 Amendment: Chapter 227 in (2) substituted "The commissioner may issue a license after the person has complied with the applicable provisions of this title and has submitted an application on a form prescribed by the commissioner" for "A license may be issued by the commissioner only after the person has complied with the applicable provisions of this title"; and in (4) substituted "The commissioner may revoke or suspend any license issued under this section for violations of this title" for "A license issued or continued under this section may be revoked or suspended by the commissioner for violation of this title." Amendment effective October 1, 2001.

1995 Amendment: Chapter 379 in (3) deleted reference to subsection (1)(i) of 33-30-204 and inserted "on or before March 1 of each year"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-30-109. Health service corporation amended articles.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

33-30-111. Notice of violation — conference.

Compiler's Comments

1987 Amendments: Chapters 370 and 606 near beginning, after "chapter", deleted "except 33-30-1012".

33-30-112. Cease and desist order.

Compiler's Comments

1987 Amendments: Chapters 370 and 606 at end of (1) deleted "except 33-30-1012".

33-30-113. Injunctive relief.

Compiler's Comments

1987 Amendments: Chapters 370 and 606 near beginning, after "chapter", deleted "except 33-30-1012".

Part 2
Finance

33-30-201. Reserves — requirements suspended.

Compiler's Comments

2015 Amendment: Chapter 63 in (2)(a) substituted "authorized" for "licensed". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

1999 Amendment: Chapter 472 in (2)(a) after "$500,000 or" inserted "if licensed under this chapter after October 1, 1999, $750,000"; deleted former (3) that read: "(3) If the reserves are not equal to the average in subsection (2)(b), they must have been increased during the preceding 12 months by an amount equal to 1% of the gross dues or fee income during that period"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

33-30-202. Annual report by certified public accountant.

Compiler's Comments

1995 Amendment: Chapter 379 in (1) substituted "June 1 a financial statement audited by a certified public accountant pursuant to rules promulgated by the commissioner" for "March 1 of each year, a report under oath setting forth"; deleted former (1) that read: "(1) the name of the corporation"; deleted former (2) that read: "(2) the address of its registered office in this state and the name of its registered agent at that address"; deleted (3) that read: "(3) the names and addresses of its directors and officers"; deleted (4) that read: "(4) a brief statement of the character of the affairs which the corporation is actually conducting"; deleted (5) that read: "(5) the amount of all dues or fees collected from members in the last fiscal year, the amounts actually paid during that year for health services for the members or beneficiaries, and the amounts placed in reserves"; deleted (6) that read: "(6) a balance sheet and statement of income and expenditures for the most recent fiscal year of the corporation, prepared and verified by two officers of the corporation and certified by a certified public accountant"; deleted (7) that read: "(7) a statement of any other facts or information concerning the financial affairs of the health service corporation which may be reasonably required by the commissioner"; inserted (2) concerning rules established by the Commissioner governing the content and preparation of the report required by subsection (1); and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

33-30-204. Fees.

Compiler's Comments

2015 Amendment: Chapter 63 in (1)(e), (1)(f), and (2) substituted "certificate of authority" for "license". Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2003 Amendment: Chapter 380 deleted former (1)(a) that read: "(a) filing any statement or report ..... $1"; deleted former (1)(c) that read: "(c) for a certificate with affixed seal ..... $10"; in (2) required deposit of fees in state special revenue fund of state auditor's office rather than deposit in general fund; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 379 deleted former (1)(a) that read: "(a) insurance producer's license:

(i) application for original license and issuance of license ... $15
(ii) annual renewal ... $15

(iii) examination for license, for each examination ... $15"; in (1)(a), after "any", deleted "other"; in (1)(f) substituted "annual statement" for "annual report, other than as part of application for original license"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1989 Amendments: Chapter 351 in (2), before "all fees", substituted "general fund" for "insurance regulatory trust account provided for in 17-2-121". Amendment effective July 1, 1989.

Chapter 713 substituted references to insurance producer for references to enrollment representative. Amendment effective January 1, 1990.

1987 Amendment: In (1)(a)(i), after "original license", deleted "including examination" and increased fee from $10 to $15; in (1)(a)(ii) increased fee from $5 to $15; inserted (1)(a)(iii) setting fee for examination for license; in (1)(d) increased fee from $1 to $10; in (1)(e) increased fee from $10 to $25; in (1)(f) increased fee from $25 to $100; in (1)(g), after "report", substituted reference to application for original license for "a fee of 50 cents for each individual or family unit the corporation covered at the close of the year to which the annual report is applicable, except that the minimum fee payable upon filing of an annual report is $100"; inserted (1)(h) setting fee for issuance of health service corporation license; inserted (1)(i) setting fee for continuation of license; and in (2) provided for deposit of fees in the insurance regulatory trust account instead of the general fund. Amendment effective January 1, 1988.

1981 Amendment: Increased the filing fee in subsection (1)(g) from 20 cents to 50 cents.

Statement of Intent: The statement of intent attached to HB 385 (Ch. 452, L. 1981) provided: "A statement of intent is required for House Bill 385 to explain the purpose of the legislature in approving the increase in the fee for filing of annual report by health service corporations. This bill raises the fee for each individual or family unit covered, from 20 cents to 50 cents, to finance the performance audits required on each health service corporation at least once every 4 years and to carry out other duties imposed on the Insurance Department. The Insurance Department estimates it will require one additional FTE plus a necessary appropriation to cover additional related costs such as actuarial fees, travel expenses, office space, benefits and office equipment for the FTE. The intention of the legislature is to collect the increase in the fee only if the additional FTE and appropriation are authorized."

Part 3
Operations

33-30-301. Forms — filing, approval.

Compiler's Comments

1987 Amendment: Near middle, after "filed with", substituted "and approved by the commissioner of this state and the insurance regulator of the state of domicile of the health service corporation in accordance with chapter 1, part 5" for former language that read: "the commissioner at least 30 days before that form is first used. When a form does not comply with the requirements of this chapter, the commissioner shall notify the corporation in writing of that failure and include the reasons for his opinion. Unless the corporation requests a hearing within 10 days, notice by the commissioner disallows use of this form by the corporation. If the corporation challenges the commissioner's disallowance of a form it shall request a hearing on that issue. The commissioner shall schedule a hearing as soon as practicable but not less than 15 days from the date of the request. If the commissioner finds, after the hearing, that the form is not in compliance with this chapter, he may disapprove the form and issue a final order to that effect. Notice of disapproval, including the grounds for disapproval, shall be presented to the corporation not less than 30 days after the hearing. The final order is effective 30 days after the hearing.

(2) A corporation whose forms have been ordered discontinued by the commissioner may appeal, within 15 days after an order, to a district court of the state. The court, upon filing of the proper petition, shall cause the forms and orders of the commissioner to be brought before it, and upon hearing of the case, the court shall either affirm or reverse and vacate the order of the commissioner.

(3) The court may suspend or stay a final order of the commissioner under this section pending trial of the issues or the appeal." Amendment effective January 1, 1988.

1981 Amendment: Substituted "at least 30 days before" for "within 30 days after" in the first sentence of subsection (1).

33-30-303. Grievance procedure for members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-30-305. Prohibited trade practices.

Compiler's Comments

Code Commissioner Correction: Section 1, Ch. 713, L. 1989, a short form amendment, directed the Code Commissioner to change references in this section to "agent" to "insurance producer". The obvious intent of the amendment was to replace references to insurance agents with the new term. The Code Commissioner has not made the change in this section to references contained in this section that obviously are to an agent within the meaning of a principal and agent relationship.

33-30-306. Discrimination between individuals — restrictions — ratesetting by commissioner prohibited.

Administrative Rules

ARM 6.6.2104 Jurisdiction and applicability date.

ARM 6.6.2106 Unfair discrimination on the basis of blindness.

Attorney General's Opinions

Payment for Services of Psychologists: Montana Physicians Service (Blue Shield) and Blue Cross of Montana may pay for services rendered by psychologists but are not required to do so. 37 A.G. Op. 151 (1978).

Exclusion of Coverage for Services Rendered at State Institutions: The Montana Physicians Service is prohibited from including any provision in its health service agreements that excludes payment for services rendered to beneficiaries hospitalized at state institutions if such health services would be covered if rendered to beneficiaries outside of such institution, and any such provisions are void and ineffective. 37 A.G. Op. 33 (1977).

33-30-311. Insurance producer.

Compiler's Comments

1995 Amendment: Chapter 379 at end inserted "and is subject to the provisions of 33-2-708 and Title 33, chapter 17"; deleted (2) that read: "(2) The definitions of insurance producer as defined in this chapter do not include an individual:

(a) employed and used by insurance producers for the performance of clerical, stenographic, and similar office duties;

(b) employed and used for incidental taking of an application for coverage from time to time in the office of the employing insurance producer;

(c) who secures and forwards information for the purpose of an existing group contractor for enrolling individuals under an existing group contract"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1989 Amendment: Substituted references to insurance producer for references to enrollment representative. Amendment effective January 1, 1990.

Part 10
Health Service Corporation Plans

33-30-1001. Newborn infants covered by insurance by health service corporation.

Compiler's Comments

2003 Amendment: Chapter 325 inserted exception clause; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2009.

1997 Amendment: Chapter 416 in first sentence, near middle, inserted "preexisting condition exclusion". Amendment effective July 1, 1997.

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 28 is 33-30-1001], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

1995 Amendment: Chapter 379 substituted third sentence concerning notification of birth and payment of fee in order to have coverage extended for former language that read: "If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period"; and made minor changes in style.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

1981 Amendment: Deleted "which in addition to covering the persons insured also covers members of such a person's family" after "health service corporation" in the first sentence; added the last sentence allowing policies or contracts to require notification of birth within 31 days.

33-30-1002. Disability coverage of services received in state institutions — coverage of persons eligible for public medical assistance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Exclusion of Coverage for Services Rendered at State Institutions: The Montana Physicians Service is prohibited from including any provision in its health service agreements that excludes payment for services rendered to beneficiaries hospitalized at state institutions if such health services would be covered if rendered to beneficiaries outside of such institution, and any such provisions are void and ineffective. 37 A.G. Op. 33 (1977).

33-30-1003. Continuation of coverage for persons with disabilities — individual contracts.

Compiler's Comments

2013 Amendment: Chapter 68 in (1) substituted "intellectual disability" for "mental retardation" and substituted "Proof of intellectual disability or physical disability" for "Proof of retardation or the disability". Amendment effective October 1, 2013.

1997 Amendment: Chapter 472 in (1), in first sentence near beginning after "issued for delivery in this state", deleted "after October 28, 1971" and near end substituted "disability" for "handicap" and at beginning of second sentence substituted "retardation or the disability" for "incapacity"; and made minor changes in style.

33-30-1004. Continuation of coverage for persons with disabilities — group contracts.

Compiler's Comments

2013 Amendment: Chapter 68 in (1) substituted "intellectual disability" for "mental retardation" and substituted "Proof of intellectual disability or physical disability" for "Proof of the retardation or disability". Amendment effective October 1, 2013.

1997 Amendment: Chapter 472 in (1), in first sentence near beginning after "issued for delivery in this state", deleted "after October 28, 1971" and near end substituted "disability" for "handicap" and at beginning of second sentence substituted "retardation or disability" for "incapacity"; and made minor changes in style.

33-30-1005. Right of rescission.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-30-1006. Continuing group coverage after termination.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Codification: This section is codified as both 33-22-507 and 33-30-1006.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

33-30-1007. Conversion on termination of eligibility.

Compiler's Comments

2003 Amendment: Chapter 384 inserted (5) limiting increase in premium rate; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 11, Ch. 384, L. 2003, provided: "[This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004."

1999 Amendment: Chapter 228 inserted second sentence in (3) prohibiting premium in excess of 150% of customary rate if person entitled to conversion has been insured for more than 3 years; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 3, Ch. 228, L. 1999, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after January 1, 2000."

1995 Amendment: Chapter 527 in (2) inserted last sentence referring to conversion policy; in (3), in first sentence, substituted "must be at no more than 200% of the insurer's then customary rate" for "shall be at the insurer's then customary rate" and at end, after "policy", deleted "but may not be greater than 150% of the insurer's highest group rate for a policy with the same benefits as the conversion policy" and inserted second sentence defining customary rate; inserted (4) requiring individual conversion policy; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

1991 Amendment: In (1), near middle after "3 months", inserted "and that he is not insured under another major medical disability insurance policy or plan".

Saving Clause: Section 6, Ch. 200, L. 1991, was a saving clause.

1987 Amendment: Near middle of (1), after "business", inserted "or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan". Amendment effective January 1, 1988.

1983 Amendment: At end of (3), inserted "but may not" clause relating to rate of conversion policy.

Codification: This section is codified as both 33-22-508 and 33-30-1007.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

33-30-1008. Preexisting conditions.

Compiler's Comments

Codification: This section is codified as both 33-22-509 and 33-30-1008.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

33-30-1009. Insured's family — conversion entitlement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Codification: This section is codified as both 33-22-510 and 33-30-1009.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

33-30-1013. Coverage required for services provided by nurse specialists.

Compiler's Comments

2005 Amendment: Chapter 467 near middle after "37-8-202" deleted "(5)". Amendment effective July 1, 2005.

33-30-1014. Coverage for well-child care.

Compiler's Comments

2007 Amendment: Chapter 390 in (1) near end of first sentence increased requirement for well-care coverage for children from birth through age 2 to birth through age 7. Amendment effective January 1, 2008.

Applicability: Section 8, Ch. 390, L. 2007, provided: "[This act] applies to policies, certificates, evidence of coverage, and plans issued or renewed on or after January 1, 2008."

Severability: Section 5, Ch. 199, L. 1991, was a severability clause.

Applicability: Section 6, Ch. 199, L. 1991, provided: "[This act] applies to individual or group disability policies or plans issued or renewed on or after October 1, 1991, by a disability insurer or health service corporation."

33-30-1015. Limitation of eligibility on conversion.

Compiler's Comments

2007 Amendment: Chapter 399 deleted former (1) that read: "(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395"; and made minor changes in style. Amendment effective May 3, 2007.

Saving Clause: Section 6, Ch. 200, L. 1991, was a saving clause.

33-30-1016. Coverage for adopted children from time of placement — preexisting conditions.

Compiler's Comments

1997 Amendment: Chapter 480 in (3), after "placement", substituted "has the meaning as defined in 33-22-130" for "means placement for adoption as defined in 40-8-103".

Severability: Section 172, Ch. 480, L. 1997, was a severability clause.

Applicability: Section 173, Ch. 480, L. 1997, provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 7, and Title 52, chapter 8, part 1] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Applicability: Section 5, Ch. 387, L. 1991, provided: "[This act] applies to policies, certificates, or contracts delivered, issued for delivery, or renewed in this state on or after January 1, 1992."

33-30-1017. Coverage required for services provided by naturopathic physicians.

Compiler's Comments

Effective Date: Section 4, Ch. 459, L. 1999, provided that this section is effective January 1, 2000.

33-30-1018. Coverage required for services provided by physical therapist.

Compiler's Comments

Effective Date: Section 4, Ch. 235, L. 2001, provided that this section is effective January 1, 2002.

33-30-1019. Coverage for services provided under freedom of choice for auxiliary health services.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 18, Ch. 713, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 4, Ch. 342, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 28, 2015.

33-30-1020. Coverage for services provided under freedom of choice for mental health services.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 19, Ch. 713, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 4, Ch. 206, L. 2017, provided: "[This act] is effective January 1, 2019."

33-30-1021. Applicability.

Compiler's Comments

Codification: This section is codified as both 33-22-511 and 33-30-1021.

Applicability: Section 10, Ch. 579, L. 1981, provided: "Sections 3 through 9 [33-22-507 through 33-22-511, and 33-30-1006 through 33-30-1009 and 33-30-1021] shall apply only to disability insurers and health service corporations."

Severability: Section 11, Ch. 579, L. 1981, was a severability section.

Part 11
Subrogation — Notice

33-30-1101. Subrogation rights.

Compiler's Comments

Applicability: Section 6, Ch. 365, L. 1987, provided: "This act applies to policies or contracts delivered, issued for delivery, or renewed in this state after October 1, 1987."

Case Notes

State Employee Health Care Benefits — State Subject to Regulation as Insurer: The plaintiffs claimed that under the state employee health care benefit program, they were not fully compensated for their injuries because the state had retained refunded payments it had made to their medical providers in cases where the provider had already been paid by a third-party insurer. The state claimed that under its coordination of benefits policy, it was allowed to accept the refunded payments without first ensuring the plaintiffs had been fully compensated for their injuries. The District Court granted the plaintiffs summary judgment, concluding that the state is an insurer in operating the benefit plan and that its coordination of benefits policy contravened the "made whole" requirements of 2-18-902. The state appealed to the Supreme Court, which affirmed the District Court and further agreed that the state, as an insurer to its employees through its employee health care benefit plan, is subject to the same regulations as other insurers. Diaz v. St., 2013 MT 331, 372 Mont. 393, 313 P.3d 124. See also Diaz I, 2011 MT 322, 363 Mont. 151, 267 P.3d 756.

Disputed Insurance Exclusions Violative of Subrogation Law — Disapproval by Insurance Commissioner Proper: Plaintiff insurance company submitted several insurance forms to the State Auditor/Insurance Commissioner for approval pursuant to 33-1-501. The forms contained coverage exclusions under which plaintiff would not pay for health care costs of its injured beneficiaries if the beneficiaries received or were entitled to receive benefits from any automobile or premises liability policy. The Commissioner subsequently disapproved the language in the forms containing the exclusions. The District Court affirmed the Commissioner's decision and plaintiff appealed, but the Supreme Court affirmed. The Commissioner had the statutory power and authority to disapprove the exclusions. The exclusions violated Montana law by allowing plaintiff to enjoy the benefits of subrogation in the circumstances allowed by the exclusions, and because the exclusions violated or did not comply with insurance law, disapproval of the exclusions by the Commissioner was warranted. Blue Cross & Blue Shield of Mont. v. Mont. St. Auditor & Comm'r of Ins., 2009 MT 318, 352 M 423, 218 P3d 475 (2009). See also Skauge v. Mtn. St. Tel. & Tel., 172 M 521, 565 P2d 628 (1977). However, see Scheafer v. Safeco Ins. Co., 2014 MT 73, 374 Mont. 278, 320 P.3d 967, holding that a requirement that primary coverage be exhausted before secondary insurance coverage is triggered is not subrogation.

33-30-1102. Notice — shared costs of third-party action — limitation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Applicability: Section 6, Ch. 365, L. 1987, provided: "This act applies to policies or contracts delivered, issued for delivery, or renewed in this state after October 1, 1987."

Case Notes

Disputed Insurance Exclusions Violative of Subrogation Law — Disapproval by Insurance Commissioner Proper: Plaintiff insurance company submitted several insurance forms to the State Auditor/Insurance Commissioner for approval pursuant to 33-1-501. The forms contained coverage exclusions under which plaintiff would not pay for health care costs of its injured beneficiaries if the beneficiaries received or were entitled to receive benefits from any automobile or premises liability policy. The Commissioner subsequently disapproved the language in the forms containing the exclusions. The District Court affirmed the Commissioner's decision and plaintiff appealed, but the Supreme Court affirmed. The Commissioner had the statutory power and authority to disapprove the exclusions. The exclusions violated Montana law by allowing plaintiff to enjoy the benefits of subrogation in the circumstances allowed by the exclusions, and because the exclusions violated or did not comply with insurance law, disapproval of the exclusions by the Commissioner was warranted. Blue Cross & Blue Shield of Mont. v. Mont. St. Auditor & Comm'r of Ins., 2009 MT 318, 352 M 423, 218 P3d 475 (2009). See also Skauge v. Mtn. St. Tel. & Tel., 172 M 521, 565 P2d 628 (1977). However, see Scheafer v. Safeco Ins. Co., 2014 MT

73, 374 Mont. 278, 320 P.3d 967, holding that a requirement that primary coverage be exhausted before secondary insurance coverage is triggered is not subrogation.

Statute of Limitations Applicable to Subrogee in Insurance Claim: St. Paul Fire & Marine Insurance Company (St. Paul), as subrogee, sought to recover from Glassing a payment made to its insured Lynn for underinsured motorist coverage, interest, and costs. Montana has no statutory authority extending the statute of limitations for subrogation claims in such cases. Because an insurer's claim is derived from that of the insured, St. Paul's claim was subject to the same defenses, including the statute of limitations, as though the action were sued upon by the insured and St. Paul had no claim for its damages independent of Lynn's claim. An insurer's right to subrogation attaches upon paying an insured's loss; thus, the 3-year statute of limitations in 27-2-204 applied to St. Paul's claim in the same manner that the original action brought by Lynn and, when raised after the 3-year limit, was time-barred. St. Paul Fire & Marine Ins. Co. v. Glassing, 269 M 76, 887 P2d 218, 51 St. Rep. 1437 (1994), followed in Nimmick v. St. Farm Mut. Auto. Ins. Co., 270 M 315, 891 P2d 1154, 52 St. Rep. 208 (1995). See also Skauge v. Mtn. St. Tel. & Tel., 172 M 521, 565 P2d 628 (1977), and Beedie v. Shelly, 187 M 556, 610 P2d 713 (1980).

CHAPTER 31
HEALTH MAINTENANCE ORGANIZATIONS

Part 1
General Provisions

33-31-102. Definitions.

Compiler's Comments

2021 Amendment — Code Commissioner Correction: Chapter 262 in definition of health maintenance organization inserted (b)(ii) exempting direct patient care agreements established pursuant to 50-4-107; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 262 in (10)(b)(ii) referred to "[section 1]". However, the apparent intent of the original bill was to refer to sec. 2, Ch. 262, and the Code Commissioner has changed the final statutory reference in (10)(b)(ii) accordingly.

2011 Amendments — Composite Section: Chapter 173 in definition of provider inserted reference to registered nurse first assistant; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 346 inserted definition of accountable care organization; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendments — Composite Section: Chapter 195 in definition of health maintenance organization inserted (b) excluding PACE organization; inserted definition of PACE organization; and made minor changes in style. Amendment effective April 9, 2009.

Chapter 271 in definition of insurance producer after "individual" substituted "or business entity" for "partnership, or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 356 inserted definition of dependent; and made minor changes in style. Amendment effective January 1, 2008.

Although sec. 5, Ch. 463, L. 2007, purported to amend this section, the final version of the text remained unamended.

2001 Amendment: Chapter 450 in definition of basic health care services inserted (j) concerning outpatient self-management training and education for diabetes; and made minor changes in style. Amendment effective January 1, 2002.

Effective Date — Applicability: Section 7, Ch. 450, L. 2001, provided: "[This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date."

1999 Amendment: Chapter 434 in definition of basic health care services substituted (j) concerning treatment and medical foods for inborn errors of metabolism for "treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status." Amendment effective January 1, 2000.

Effective Date — Applicability: Section 6, Ch. 434, L. 1999, provided that this section is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

1997 Amendments — Composite Section: Chapter 165 inserted definitions of point-of-service option, provider panel, and purchaser; and made minor changes in style.

Chapter 413 in definition of health maintenance organization, in first sentence after "prepaid", deleted "or other financial" and inserted last sentence concerning method of provider payments; in definition of provider, near middle, substituted "advanced practice registered nurse" for "nurse specialist"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 416 inserted definition of affiliation period; and made minor changes in style. Amendment effective July 1, 1997.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Applicability: Section 4, Ch. 165, L. 1997, provided: "[This act] [33-31-102 and 33-31-306] applies to health care service agreements purchased or renewed after January 1, 2000."

Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 29 is 33-31-102], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

1991 Amendments: Chapter 437 deleted definitions of Department of Health and Director, meaning the Director of the Department of Health and Environmental Sciences. Amendment effective July 1, 1991.

Chapter 663 inserted (1)(i) relating to minimum mammography examination.

Applicability: Section 4, Ch. 663, L. 1991, provided that the amendments to this section apply to policies or contracts delivered or issued for delivery or renewed in this state on or after January 1, 1992.

1989 Amendments: Chapter 34 at end of definition of Director substituted "2-15-2101" for "2-15-2102"; and made minor change in phraseology. Amendment effective February 24, 1989.

Chapter 80 in definition of basic health care services inserted provision concerning treatment for phenylketonuria.

Chapter 713 substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

Retroactive Applicability: Section 6, Ch. 34, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to a director of health and environmental sciences appointed on or after January 2, 1989."

Applicability: Section 3, Ch. 80, L. 1989, provided: "[This act] applies to policies or contracts delivered or issued for delivery or renewed in this state on or after January 1, 1990."

Administrative Rules

ARM 6.6.2503 Definitions.

ARM 6.6.2508 Services.

Attorney General's Opinions

Competitive Bidding Requirements Inapplicable to Health Maintenance Organizations, Except When Entering Preferred Provider Agreement: Definitions applicable to the Preferred Provider Agreements Act (PPA Act) under Title 33, ch. 22, part 17, and the Montana Health Maintenance Organization Act (HMO Act) under Title 33, ch. 31, are distinctive in the methods by which health services are contracted for in a preferred provider context and the traditional HMO context. The PPA Act applies to a limited class of provider agreements, not including those typically entered into by HMOs. By its passage of the PPA Act and the HMO Act, the Legislature provided two alternative health care delivery systems that would maximize options for health care cost savings. The two acts are independent. Nothing in the applicable statutes supports mandatory application to HMO provider contracts of an otherwise voluntary competitive bidding process under the PPA Act. Therefore, a health maintenance organization is not bound by the competitive bidding requirements of 33-22-1704 in contracting with health care providers, except when entering into a preferred provider agreement. 46 A.G. Op. 9 (1995).

33-31-103. Rules.

Compiler's Comments

1991 Amendment: Deleted (2) granting the Department of Health authority to make rules effectuating the chapter. Amendment effective July 1, 1991.

1987 Statement of Intent: The statement of intent attached to Ch. 457, L. 1987, provided: "A statement of intent is required for this bill because:

(1) it authorizes the commissioner of insurance of the state of Montana (commissioner) and the department of health and environmental sciences [now department of public health and human services] to adopt, after notice and hearing, reasonable rules necessary or proper to effectuate sections 1 through 29 [Title 33, ch. 31];

(2) section 3 [33-31-201] authorizes the commissioner to make reasonable rules exempting a health maintenance organization from having to file a notice with the commissioner describing material modifications of information required in an application for a certificate of authority if the commissioner considers the information unnecessary; and

(3) section 5 [33-31-221] authorizes the commissioner to make reasonable rules exempting a health maintenance organization from having to file a notice with the commissioner before exercising the powers granted in subsection (1)(a), (1)(b), or (1)(d) if the commissioner believes exercising those powers will have de minimis effect. The legislature expects the commissioner to make only reasonable rules necessary to effectuate or aid the effectuation of sections 1 through 29 [Title 33, ch. 31]. The legislature does not authorize the commissioner to adopt rules that extend, modify, or conflict with either any law of this state or any reasonable implications of those laws. If reasonably possible, the commissioner shall set forth a proposed rule or amendment to a rule in or with the required notice of hearing. No rule or amendment to a rule by the commissioner is effective until it has been on file in the commissioner's office for at least 10 days.

Any rule promulgated by the commissioner in regard to advisory boards of health maintenance organizations must require the membership of those advisory boards to include multidisciplinary representatives."

Administrative Rules

Title 6, chapter 6, subchapter 25, ARM Health maintenance organizations.

33-31-111. Statutory construction and relationship to other laws.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 88, L. 2023, in (7) inserted reference to 33-22-114 in list of statutory references. Amendment effective April 18, 2023.

Section 3, Ch. 179, L. 2023, in (7) inserted reference to 33-22-154 in list of statutory references. Amendment effective January 1, 2024.

Section 3, Ch. 600, L. 2023, in (7) inserted reference to 33-22-155 in list of statutory references. Amendment effective January 1, 2024.

Section 6, Ch. 782, L. 2023, in (7) inserted reference to 33-22-2103 in list of statutory references. Amendment effective January 1, 2024.

Applicability: Section 7, Ch. 600, L. 2023, provided: "[This act] applies to health care policies and plans issued or renewed on or after [the effective date of this act]." Effective January 1, 2024.

Section 12, Ch. 782, L. 2023, provided: "[This act] applies to insurance policies, certificates, and contracts issued or renewed on or after January 1, 2024."

2021 Amendments — Composite Section: Chapter 209 in (7) inserted "33-22-128" in list of statutory references. Amendment effective January 1, 2022.

Chapter 501 in (7) at beginning inserted "Other chapters and provisions of this title apply to health maintenance organizations as follows:", inserted reference to Title 33, chapter 2, part 24, and at end deleted "apply to health maintenance organizations"; and made minor changes in style. Amendment effective January 1, 2022.

Applicability: Section 7, Ch. 209, L. 2021, provided: "[This act] applies to health insurance plans and policies issued or renewed on or after January 1, 2022."

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

2019 Amendments — Composite Section: Chapter 25 in (7) in middle inserted reference to Title 33, chapters 10 and 12; and made minor changes in style. Amendment effective January 1, 2020.

Chapter 60 in (7) inserted reference to Title 33, chapter 1, part 6. Amendment effective July 1, 2019.

Chapter 215 in (7) inserted reference to 33-22-180; and made minor changes in style. Amendment effective April 30, 2019.

Effective Date — Applicability: Section 12, Ch. 25, L. 2019, provided: "[This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020."

Section 7, Ch. 215, L. 2019, provided: "[This act] is effective on passage and approval [approved April 30, 2019] and applies to contracts and agreements signed on or after [the effective date of this act]." Effective April 30, 2019.

Saving Clause: Section 10, Ch. 25, L. 2019, was a saving clause.

2017 Amendments — Composite Section — Code Commissioner Correction: Chapter 151 in (7) inserted reference to Title 33, chapter 2, part 13, and inserted "Title 33, chapter 3, part 6"; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 231 in (7) inserted reference to Title 33, chapter 2, part 23; and made minor changes in style. Amendment effective April 25, 2017.

Chapter 245 in (6)(b) substituted "parts 7 and 19" for "part 19". Amendment effective January 1, 2018. Pursuant to sec. 24, Ch. 275, L. 2017, in (7) the code commissioner deleted a reference to 33-22-706 because that section was repealed by sec. 9, Ch. 245, L. 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

Section 12, Ch. 231, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 256 in (7) inserted "33-22-139". Amendment effective January 1, 2016.

Chapter 428 in (7) near end inserted reference to Title 33, chapter 32. Amendment effective January 1, 2016.

Applicability: Section 7, Ch. 256, L. 2015, provided: "[This act] applies to health insurance plans and policies issued or renewed on or after January 1, 2016."

Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

2013 Amendments — Composite Section: Chapter 97 in (7) inserted "33-22-153"; and made minor changes in style. Amendment effective March 27, 2013.

Chapter 164 in (7) "33-22-138"; and made minor changes in style. Amendment effective January 1, 2014.

Chapter 334 in (6)(a) inserted "Title 33"; and in (7)(a) inserted "33-22-156 through 33-22-159"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 363 in (7) inserted "and Title 33, chapter 40, part 1"; and made minor changes in style. Amendment effective April 30, 2013, and terminates December 31, 2017.

Severability: Section 8, Ch. 334, L. 2013, was a severability clause.

Effective Date — Applicability: Section 9, Ch. 334, L. 2013, provided: "[This act] is effective July 1, 2013, and applies to rate filings that affect health insurance coverage in the individual or small group market issued on or after January 1, 2014."

2009 Amendments — Composite Section: Chapter 271 in (7) inserted reference to 33-22-137; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 359 in (7) inserted reference to 33-22-515. Amendment effective January 1, 2010.

Saving Clause: Section 7, Ch. 359, L. 2009, was a saving clause.

Applicability: Section 9, Ch. 359, L. 2009, provided: "[This act] applies to contracts or policies issued or renewed on or after [the effective date of this act]." Effective January 1, 2010.

2007 Amendments — Composite Section: Chapter 356 in (7) inserted reference to 33-22-152; and made minor changes in style. Amendment effective January 1, 2008.

Chapter 399 in (7) inserted reference to Title 33, chapter 17. Amendment effective May 3, 2007.

2003 Amendments — Composite Section: (Temporary version) Chapter 325 in (6)(d) and (7) inserted exception clause; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2009.

Chapter 380 in (7) inserted reference to Title 33, chapter 2, part 19, and Title 33, chapter 19; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 384 in (7) inserted "33-22-107"; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 11, Ch. 384, L. 2003, provided: "[This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004."

2001 Amendments — Composite Section: Chapter 227 in (7) after "of this title" inserted "33-2-1114, 33-2-1211, 33-2-1212, 33-3-422". Amendment effective October 1, 2001.

Chapter 336 in (7) inserted references to 33-22-244 and 33-22-521; and made minor changes in style. Amendment effective January 1, 2002.

Chapter 450 in (7) inserted reference to 33-22-129; and made minor changes in style. Amendment effective January 1, 2002.

Saving Clause: Section 5, Ch. 336, L. 2001, was a saving clause.

Effective Date — Applicability: Section 6, Ch. 336, L. 2001, provided: "[This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date."

Section 7, Ch. 450, L. 2001, provided: "[This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date."

1999 Amendments — Composite Section: Chapter 178 in (7) inserted "33-22-136". Amendment effective March 25, 1999.

Chapter 334 inserted (6)(e) adding that a health maintenance organization is not exempt from the provisions of Title 33, chapter 18, part 9; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 348 in (7) inserted "33-22-706"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 434 in (7) inserted "33-22-131". Amendment effective January 1, 2000.

Chapter 472 in (7) at beginning substituted "Chapter 1, parts 12 and 13, of this title, 33-3-431, 33-15-308" for "Sections". Amendment effective October 1, 1999.

Saving Clause: Section 8, Ch. 334, L. 1999, was a saving clause.

Section 8, Ch. 348, L. 1999, was a saving clause.

Section 72, Ch. 472, L. 1999, was a saving clause.

Severability: Section 9, Ch. 334, L. 1999, was a severability clause.

Section 7, Ch. 348, L. 1999, was a severability clause.

Section 71, Ch. 472, L. 1999, was a severability clause.

Effective Date — Applicability: Section 9, Ch. 348, L. 1999, provided: "[This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date."

Section 6, Ch. 434, L. 1999, provided that this section is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

1997 Amendments: Chapter 198 inserted (6)(b) regarding applicability of section provisions to a health maintenance organization under Title 33, chapter 22, part 19. Amendment effective April 2, 1997.

Chapter 410 inserted (6)(c) concerning exclusion of health maintenance organization from provisions of 33-22-134 and 33-22-135.

Chapter 413 inserted (6)(d) providing no exemption from Title 33, chapter 36; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 416 inserted (7) concerning application of sections to health maintenance organizations. Amendment effective July 1, 1997.

Chapter 527 inserted (6)(a) regarding health maintenance organization prohibition against interference with certain communications.

Chapter 531 in (5), in first sentence after "from", inserted "the prohibition of pecuniary interest under 33-3-308 or the" and in second sentence, after "purposes of", inserted "33-3-308 and".

Preamble: The preamble attached to Ch. 198, L. 1997, provided: "WHEREAS, the specialty of obstetrics and gynecology is devoted to primary and preventative health care of women throughout their lifetime; and

WHEREAS, significant numbers of women view their obstetrician and gynecologist as their primary or only physician; and

WHEREAS, for many women, an obstetrician or gynecologist is often the only physician they see regularly during their reproductive years; and

WHEREAS, a general medical examination was the second most frequently cited purpose for patient visits to obstetricians and gynecologists in 1989 and 1990; and

WHEREAS, obstetricians and gynecologists refer their patients less frequently than other primary care physicians, thus avoiding costly and time-consuming referrals to specialists."

Severability: Section 12, Ch. 198, L. 1997, was a severability clause.

Section 46, Ch. 531, L. 1997, was a severability clause.

Applicability: Section 9, Ch. 410, L. 1997, provided: "[This act] is applicable to all contracts issued or renewed on or after January 1, 1998."

Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 30 is 33-31-111], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Section 7, Ch. 527, L. 1997, provided: "[This act] applies to contracts entered into or renewed after [the effective date of this act] [effective October 1, 1997] between a health care provider and a health carrier or managed care organization."

1995 Amendment: Chapter 379 inserted (5) concerning the provisions of this section not exempting a health maintenance organization.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

33-31-114. Coverage for adopted children from time of placement — preexisting conditions.

Compiler's Comments

1997 Amendment: Chapter 480 in (3), after "placement", substituted "has the meaning as defined in 33-22-130" for "means placement for adoption as defined in 40-8-103".

Severability: Section 172, Ch. 480, L. 1997, was a severability clause.

Applicability: Section 173, Ch. 480, L. 1997, provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 7, and Title 52, chapter 8, part 1] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Applicability: Section 5, Ch. 387, L. 1991, provided: "[This act] applies to policies, certificates, or contracts delivered, issued for delivery, or renewed in this state on or after January 1, 1992."

Source: This section is based on 1989 Laws of New Mexico, Ch. 89, codified as N.M. Stat. Ann. § 59A-46-33 (1978).

33-31-115. Applicability to managed health care entity.

Compiler's Comments

2011 Amendment: Chapter 351 deleted former (1) that read: "(1) A managed health care entity, as defined in 53-6-702, is governed by the provisions of Title 53, chapter 6, part 7"; inserted (2) concerning exemption for certain managed health care entities; and made minor changes in style. Amendment effective May 6, 2011.

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

2001 Amendment: Chapter 466 in (1) at end after "part 7" deleted "and by the licensure and financial solvency provisions of this chapter, but the commissioner may by rule reduce or eliminate a requirement of this chapter if the requirement is demonstrated to be unnecessary for the operation of a managed health care entity"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 577 in (1) at beginning and at end substituted "managed health care entity" for "managed care community network" and near middle before "this chapter" inserted "the licensure and financial solvency provisions of"; and inserted (2) allowing limitation of services. Amendment effective May 6, 1999.

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

Effective Date: Section 14, Ch. 502, L. 1995, provided: "[This act] is effective July 1, 1995."

Part 2
Authorization of Health Maintenance Organizations

33-31-201. Establishment of health maintenance organizations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 32, Ch. 157, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 271 in (1) in last sentence near middle substituted "registers with the secretary of state to transact business" for "obtains from the secretary of state a certificate of authority to transact business" and at end substituted "35-14-1502" for "35-1-1028". Amendment effective June 1, 2020.

2011 Amendment: Chapter 346 inserted (8) relating to waiver of requirements for accountable care organization. Amendment effective October 1, 2011.

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 195 inserted (7) regarding waivers for PACE organizations; and made minor changes in style. Amendment effective April 9, 2009.

1991 Amendments: Chapter 368 at end of (1) substituted "35-1-1028" for "35-1-1001". Amendment effective January 1, 1992.

Chapter 437 in (2), near end of first sentence after "commissioner", deleted "and the department of health"; and deleted former (3)(d)(xii) that provided: "(xii) a description of the procedures and programs to be implemented to meet the quality of health care requirements in 33-31-202". Amendment effective July 1, 1991.

Administrative Rules

ARM 6.6.2504 Filing exemption for health maintenance organization operated by insurer or health service corporation as a plan.

33-31-202. Issuance of certificate of authority.

Compiler's Comments

2003 Amendment: Chapter 325 in (1)(b) near middle of first sentence inserted exception clause; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2009.

1999 Amendments — Composite Section: Chapter 472 inserted (3) requiring examination of each health maintenance organization applying for initial authority to do business. Amendment effective October 1, 1999.

Chapter 577 in (1)(b) near beginning of second sentence after "apply to the" inserted "physical or mental". Amendment effective May 6, 1999.

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1995 Amendment: Chapter 590 in (1)(b) inserted second sentence concerning health care services by a health maintenance organization; and made minor changes in style.

1991 Amendment: Deleted former (1) and (2) that provided: "(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall transmit copies of the application and accompanying documents to the department of health. The department of health shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished, has:

(a) demonstrated the willingness and potential ability to assure that it will provide health care services in a manner assuring availability and accessibility of adequate personnel and facilities and enhancing availability, accessibility, and continuity of service;

(b) arrangements, established in accordance with the rules made by the department of health, for an ongoing quality assurance program concerning health care availability, accessibility, and continuity of service; and

(c) a procedure, established in accordance with rules of the department of health, to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and any other matters as may be reasonably required by the department of health.

(2) Within 60 days of receipt of the application from a health maintenance organization for issuance of a certificate of authority, the department of health shall certify to the commissioner that the proposed health maintenance organization meets the requirements of subsection (1) or shall, after notice and hearing, notify the commissioner that the health maintenance organization does not meet those requirements and specify in what respects it is deficient. The director may extend by not more than an additional 30 days the period within which he may certify to the commissioner that the proposed health maintenance organization meets or does not meet the requirements of subsection (1) by giving notice of the extension to the commissioner and the health maintenance organization before the expiration of the initial 60-day period"; near beginning of (1), after "180 days", substituted "after he receives the application" for "of receipt of the certification from the Department of Health"; deleted former (3)(b) concerning certification by Department of Health of health maintenance organization's plan of operation; in (1)(e), after "commissioner", deleted "or the department of health"; and deleted former (3)(g) concerning correction of deficiencies identified by Department of Health. Amendment effective July 1, 1991.

Administrative Rules

ARM 6.6.2508 Services.

ARM 6.6.2509 Other requirements.

33-31-204. Acquisition, control, or merger of a health maintenance organization.

Compiler's Comments

2015 Amendment: Chapter 370 in (2) substituted "33-2-1104" for "33-2-1104(2)"; and made minor changes in style. Amendment effective April 30, 2015.

Saving Clause: Section 41, Ch. 370, L. 2015, was a saving clause.

Severability: Section 42, Ch. 370, L. 2015, was a severability clause.

Retroactive Applicability: Section 44, Ch. 370, L. 2015, provided: "[This act], except for the provisions of [sections 12 and 13] [33-2-403 and 33-2-404], applies retroactively, within the meaning of 1-2-109, to all policies and contracts subject to 33-2-521 [renumbered 33-2-407] that were issued prior to the operative date of the valuation manual as provided in 33-2-523 [renumbered 33-2-409]."

33-31-211. Annual statements — revocation for failure to file — penalty for false swearing.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) at end deleted "In addition, a health maintenance organization shall, unless it is operated by an insurer or a health service corporation as a plan, annually file on or before June 1 an audited financial statement. A health maintenance organization's audited financial statement must comply with rules adopted by the commissioner concerning audited financial statements"; inserted (2) requiring quarterly financial statements to be filed with the national association of insurance commissioners; in (4) after "annual statement" inserted "or quarterly financial statement"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2001 Amendment: Chapter 227 in (1) at end of third sentence inserted "and the Accounting Practices and Procedures Manual of the national association of insurance commissioners"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 in (1) at end of second sentence inserted "and must be completed in accordance with the national association of insurance commissioners' annual statement instructions" and inserted sixth sentence requiring that the audited financial statement comply with rules concerning audited statements. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendments — Composite Section: Chapter 413 in (1) inserted fifth sentence requiring health maintenance organization to file audited financial statement; in (2), near beginning of first sentence, inserted "required by March 1"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 531 in (1), in fourth sentence after "commissioner may", deleted "in his discretion"; in (2), near middle of second sentence after "33-31-212", inserted "may impose a penalty of $100" and after "may" deleted "in his discretion" and inserted third and fourth sentences regarding separate violations and total possible penalty; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-31-212. Fees.

Compiler's Comments

2017 Amendment: Chapter 151 in (2) substituted "33-31-211(4)" for "33-31-211(3)". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2003 Amendment: Chapter 380 at end of (2) required deposit of fees in state special revenue fund to credit of state auditor's office rather than deposit in general fund; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Deleted (3) concerning fee assessment by Director of Department of Health. Amendment effective July 1, 1991.

1989 Amendments: Chapter 351 in (2), after "charges", deleted "except" and at end substituted "general fund" for "insurance regulatory trust account pursuant to 17-2-121 through 17-2-123"; and made minor changes in punctuation and phraseology. Amendment effective July 1, 1989.

Chapter 628 in (3), at end, deleted "Such fees are statutorily appropriated to the department of health as provided in 17-7-502." Amendment effective July 1, 1989.

33-31-215. Investment regulations.

Compiler's Comments

1999 Amendment: Chapter 304 substituted reference to chapter 12 for reference to chapter 2, part 8. Amendment effective July 1, 1999.

33-31-216. Protection against insolvency.

Compiler's Comments

1999 Amendment: Chapter 472 in (9)(a) at beginning inserted "Subject to subsection (9)(b) and"; inserted (9)(b) requiring minimum capital of $750,000; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 413 in (2), after "first year of its operation", substituted "is $200,000" for "must be the greater of:

(a) 5% of its estimate expenditures for health care services for its first year of operation;

(b) twice its estimated average monthly uncovered expenditures for its first year of operation; or

(c) $100,000"; in (4)(b), at beginning, deleted "$100,000 on the first day of the fiscal year beginning 6 months or more after October 1, 1987. In the second fiscal year, if applicable, the amount of the additional deposit must be equal to 2% of its estimated annual uncovered expenditures. In the third fiscal year, if applicable, the additional deposit must be equal to 3% of its estimated annual uncovered expenditures for that year. In the fourth fiscal year and subsequent years, if applicable, the additional deposit must be equal to" and after "expenditures for each year" deleted last sentence that read: "Each year's estimate after the first year of operation must reasonably reflect the preceding year's operating experience and delivery arrangements"; and made minor changes in style. Amendment effective January 1, 1998.

33-31-221. Powers of health maintenance organizations.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Competitive Bidding Requirements Inapplicable to Health Maintenance Organizations, Except When Entering Preferred Provider Agreement: Definitions applicable to the Preferred Provider Agreements Act (PPA Act) under Title 33, ch. 22, part 17, and the Montana Health Maintenance Organization Act (HMO Act) under Title 33, ch. 31, are distinctive in the methods by which health services are contracted for in a preferred provider context and the traditional HMO context. The PPA Act applies to a limited class of provider agreements, not including those typically entered into by HMOs. By its passage of the PPA Act and the HMO Act, the Legislature provided two alternative health care delivery systems that would maximize options for health care cost savings. The two acts are independent. Nothing in the applicable statutes supports mandatory application to HMO provider contracts of an otherwise voluntary competitive bidding process under the PPA Act. Therefore, a health maintenance organization is not bound by the competitive bidding requirements of 33-22-1704 in contracting with health care providers, except when entering into a preferred provider agreement. 46 A.G. Op. 9 (1995).

Part 3
Operations

33-31-301. Evidence of coverage — schedule of charges for health care services.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 390 inserted (3)(h) requiring evidence of well-child coverage; and made minor changes in style. Amendment effective January 1, 2008.

Chapter 463 inserted (8) requiring provision of written informational material. Amendment effective January 1, 2008.

Applicability: Section 8, Ch. 390, L. 2007, provided: "[This act] applies to policies, certificates, evidence of coverage, and plans issued or renewed on or after January 1, 2008."

Preamble: The preamble attached to Ch. 463, L. 2007, provided: "WHEREAS, early detection of cancer can save lives and improve and increase treatment options for patients; and

WHEREAS, screening tests for cancer are the main tool for early detection of cancer; and

WHEREAS, health insurers may not routinely provide information on the coverage provided for cancer screenings; and

WHEREAS, state law requires health insurers to provide a summary of benefits offered to consumers; and

WHEREAS, because of the importance of early detection, consumers deserve and will benefit from information about the types of cancer screenings that a policy covers."

2005 Amendment: Chapter 409 in (2) at end and in (4) near end after "commissioner" inserted "in accordance with 33-1-501"; substituted (6) providing that the provisions of 33-1-501 govern the filing and approval of health maintenance organization forms for former (6) that read: "(6) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer"; and made minor changes in style. Amendment effective January 1, 2006.

Applicability: Section 4, Ch. 409, L. 2005, provided: "[This act] applies to all policies, forms, and certificates filed with the commissioner of insurance on or after [the effective date of this act]." Effective January 1, 2006.

2003 Amendment: Chapter 325 in (3)(e), (3)(g), (5)(a), and (5)(b) inserted exception clause; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2009.

1999 Amendment: Chapter 472 deleted former (6) that read: "(6) A health maintenance organization may not use a schedule of charges for enrollee coverage for health care services or an amendment to a schedule of charges before it files a copy of the schedule of charges or the amendment to it with the commissioner. A health maintenance organization may evidence a subsequent amendment to a schedule of charges in a separate document issued to the enrollee. The charges in the schedule must be established in accordance with actuarial principles for various categories of enrollees, except that charges applicable to an enrollee may not be individually determined based on the status of the enrollee's health"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1997 Amendment: Chapter 183 inserted (3)(f) regarding a provision providing coverage for minimum hospital stay following childbirth; adjusted subsection references; and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendment: Chapter 590 inserted (3)(f)(iv) concerning nonapplicability to mental illness services under Medicaid; and made minor changes in style.

Administrative Rules

ARM 6.6.2506 Requirements for contracts and evidences of coverage.
ARM 6.6.2507 Prohibited practices.
ARM 6.6.2508 Services.
ARM 6.6.2509 Other requirements.

33-31-303. Complaint system.

Administrative Rules

ARM 6.6.2509 Other requirements.

33-31-305. Dentist participation as provider.

Compiler's Comments

Applicability: Section 4, Ch. 265, L. 1989, provided: "[This act] applies to contracts entered into or renewed after October 1, 1989."

33-31-306. Point-of-service option.

Compiler's Comments

Applicability: Section 4, Ch. 165, L. 1997, provided: "[This act] [33-31-102 and 33-31-306] applies to health care service agreements purchased or renewed after January 1, 2000."

33-31-307. Affiliation periods.

Compiler's Comments

Applicability: Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40, and 42 through 45 [section 43 is 33-31-307]] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

Effective Date: Section 53(2), Ch. 416, L. 1997, provided: "[Sections 1, 5 through 8, 17 through 40, and 42 through 44 [section 43 is 33-31-307]] are effective July 1, 1997."

Source: 42 U.S.C. 300gg(g).

33-31-311. Insurance producer license required.

Compiler's Comments

2009 Amendment: Chapter 271 in introductory clause in three places after "individual" substituted "or business entity" for "partnership, or corporation"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 399 in (1) inserted reference to parts 10 through 12 of Title 33, chapter 17; in (2) after "organization" inserted "or other health insurance issuer to sell" and after "solicit" inserted "or negotiate"; deleted former (2) through (4) that read: "(2) Application, appointment, and qualification for a health maintenance organization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in accordance with the provisions of chapter 17 that apply to a disability insurance producer.

(3) An individual, partnership, or corporation that holds a disability insurance producer license on October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization insurance producer.

(4) The commissioner may, in accordance with 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer license or impose a fine upon the licensee"; and made minor changes in style. Amendment effective May 3, 2007.

2001 Amendment: Chapter 227 in (4) after "in accordance with" deleted "33-1-313"; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 42 in (1)(a) substituted "licensed as an insurance producer as provided in 33-30-311" for "licensed as an insurance producer under 33-30-311 through 33-30-313"; and made minor changes in style. Amendment effective March 12, 1997.

1989 Amendment: Substituted references to insurance producer for references to insurance agent or agent and substituted references to insurance producer for references to enrollment representative. Amendment effective January 1, 1990.

33-31-312. Prohibited practices.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 6.6.2506 Requirements for contracts and evidences of coverage.
ARM 6.6.2507 Prohibited practices.

33-31-313. Premium increase restriction — exception.

Compiler's Comments

Applicability: Section 32, Ch. 413, L. 1997, provided: "[This act] applies to a health carrier as defined in [section 10] [33-36-103] who offers a managed care plan as defined in [section 10] [33-36-103] on or after [the effective date of this section]." Effective April 28, 1997.

Effective Date: Section 33(1), Ch. 413, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998."

33-31-321. Disclosure standards — health maintenance organizations.

Compiler's Comments

Applicability: Section 15, Ch. 527, L. 1995, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act]." Effective January 1, 1996.

Effective Date: Section 16, Ch. 527, L. 1995, provided that this section is effective January 1, 1996.

Part 4
Supervision, Rehabilitation, and Liquidation

33-31-401. Examination.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) in second sentence substituted "5 years" for "3 years" and in third sentence at beginning inserted "Similarly"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2001 Amendment: Chapter 227 in (1) inserted third sentence requiring the commissioner to examine certain health maintenance organizations at least once every 5 years. Amendment effective October 1, 2001.

1999 Amendment: Chapter 472 in (1) inserted third sentence applying certain statutory provisions to examinations; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 71, Ch. 472, L. 1999, was a severability clause.

Saving Clause: Section 72, Ch. 472, L. 1999, was a saving clause.

1991 Amendment: Deleted former (2) concerning examination of health care organizations by Department of Health; in (2), near beginning of second sentence after "commissioner", deleted "and the department of health"; in (3)(b) changed internal reference; deleted former (4)(b) concerning expenses of examination conducted by Director of Department of Health; and in two places in (4), after "commissioner", deleted "or the director". Amendment effective July 1, 1991.

1989 Amendments: Chapter 628 in (4)(b) deleted "Such remitted expenses are statutorily appropriated to the department of health as provided in 17-7-502"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Chapter 713 substituted references to insurance producer for references to insurance agent or agent. Amendment effective January 1, 1990.

33-31-402. Suspension or revocation of certificate of authority.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Deleted former (1)(d) concerning Director of Department of Health certifying that health maintenance organization does not meet statutory requirements or is unable to furnish health care services. Amendment effective July 1, 1991.

33-31-403. Supervision, rehabilitation, or liquidation of health maintenance organization.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

33-31-404. Administrative procedures.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Near middle of (1), after "organization", deleted "and the department of health"; deleted first sentence of (2) concerning attendance at hearings and recommendations and findings regarding certificate of authority by Director of Department of Health, in second sentence, after "organization", deleted "and submit a copy to the director", and near middle of third sentence, after "commissioner", deleted "and the recommendations and findings of the director"; deleted (4) concerning applicability of Montana Administrative Procedure Act to notice and hearings required with regard to actions taken by Director of Department of Health; and made minor change in style. Amendment effective July 1, 1991.

33-31-405. Penalties and enforcement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: In two places in (2), after "commissioner", deleted "or the director". Amendment effective July 1, 1991.

Administrative Rules

ARM 6.6.2510 Penalties.

CHAPTER 32
HEALTH UTILIZATION REVIEW

Chapter Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 665, L. 1991, provided: "A statement of intent is required for this bill because [section 7] [33-32-204, now repealed] authorizes the commissioner of insurance to adopt rules for the purpose of implementing [sections 1 through 9] [this chapter].

It is the intent of the legislature that the commissioner of insurance adopt rules necessary for the regulation of utilization reviews in this state. Rules adopted by the commissioner may include but are not limited to rules providing for:

(1) information to be included in the utilization review plan required in [section 3] [33-32-103];
(2) utilization review criteria, standards, and procedures; and
(3) the protection of the confidentiality of medical records used in the course of utilization reviews.

Rules adopted by the commissioner of insurance must be consistent with the purposes of this bill as stated in [section 1] [33-32-101] and must supplement the provisions of [sections 1 through 9] [this chapter]."

Part 1
General Provisions

33-32-101. Purpose.

Compiler's Comments

2019 Amendment: Chapter 470 in (3) after "ensure" inserted "timely"; inserted (4) regarding preserving the integrity of the provider and patient relationship; inserted (5)(b) regarding establishing the use of written clinical criteria; in (6) substituted "establish written standards and clinical criteria" for "establish standards and criteria"; and made minor changes in style. Amendment effective January 1, 2020.

Effective Date — Applicability: Section 10, Ch. 470, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to plan years beginning on or after January 1, 2020."

Severability: Section 9, Ch. 470, L. 2019, was a severability clause.

2015 Amendment: Chapter 428 inserted (5) regarding standards and criteria for utilization review and benefit determination processes; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-102. Definitions.

Compiler's Comments

2021 Purported Amendment: Although sec. 8, Ch. 471, L. 2021, purported to amend this section, the final version of the text remained unamended except for nonsubstantive style changes. Amendment effective July 1, 2021.

2019 Amendment: Chapter 470 in definition of clinical review criteria substituted current text for "means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health insurance issuer to determine the necessity and appropriateness of health care services"; in definition of health care provider in (a) inserted "advanced practice registered nurse"; in definition of health care services inserted "including the provision of pharmaceutical products or services or durable medical equipment"; inserted definitions of medical necessity and preservice claim; in definition of utilization review organization substituted current text for "means an entity that conducts utilization review, other than a health insurance issuer performing a review for its own health plans"; and made minor changes in style. Amendment effective January 1, 2020.

Effective Date — Applicability: Section 10, Ch. 470, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to plan years beginning on or after January 1, 2020."

Severability: Section 9, Ch. 470, L. 2019, was a severability clause.

2017 Amendment: Chapter 151 in definition of health care provider in (a) inserted "physician assistant"; and in definition of urgent care request in (a)(ii) and in (c) substituted "health care provider" for "physician". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendment: Chapter 428 inserted definitions of adverse determination, ambulatory review, authorized representative, case management, certification, clinical peer, clinical review criteria, concurrent review, cost sharing, covered benefits, covered person, discharge planning, emergency medical condition, emergency services, external review, final adverse determination, grievance, health insurance issuer, network, participating provider, person, prospective review, rescission, retrospective review, second opinion, stabilize, urgent care request, and utilization review organization; deleted definition that read: ""Commissioner" means the commissioner of insurance provided for in 2-15-1903"; in definition of health care services substituted "services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease" for "the health care and services provided by health care providers, including drugs, medicines, ambulance services, and other therapeutic and rehabilitative services and supplies"; in definition of utilization review substituted current definition for "means a system for review of health care services for a patient to determine the necessity or appropriateness of services, whether that review is prospective, concurrent, or retrospective, when the review will be used directly or indirectly in order to determine whether the health care services will be paid, covered, or provided.

(b) Utilization review does not include routine claim administration or determination that does not include determinations of medical necessity or appropriateness"; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

2001 Amendment: Chapter 23 in definition of health care provider in (a) substituted "licensed addiction counselor" for "certified chemical dependency counselor"; and made minor changes in style. Amendment effective January 1, 2002.

33-32-103. Utilization review plan.

Compiler's Comments

2017 Amendment: Chapter 151 in introductory clause after "maintains" substituted "and can provide at the commissioner's request" for "with the commissioner". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendment: Chapter 428 at beginning substituted "An entity covered under the provisions of this chapter" for "A person" and after "in this state" substituted "unless that entity" for "unless that person"; deleted former (2) and (3) that read: "(2) the provisions by which patients or providers may seek reconsideration or appeal of adverse decisions by the person conducting the utilization review;

(3) the type and qualifications of the personnel either employed or under contract to perform the utilization review"; in (2) substituted "representative of the entity" for "representative of the person"; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

1993 Amendment: Chapter 561 in (1)(b), before "medicaid", deleted "general relief medical assistance or"; and made minor changes in style. Amendment effective July 1, 1993.

33-32-104. Preemption by federal law.

Compiler's Comments

2015 Amendment: Chapter 428 in three places after reference to preemption deleted reference to duplication. Amendment effective January 1, 2016.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-105. Application — exemptions.

Compiler's Comments

2015 Amendment: Chapter 428 in (1) at beginning inserted exception clause and after "apply to" deleted "a person or entity performing utilization reviews who is, or is affiliated with, under contract with, or acting on behalf of"; substituted (1)(a), (1)(b), and (1)(c) concerning application of chapter for former (1)(a) and (1)(b) that read: "(a) a Montana business entity; or

(b) a third party that provides or administers health care benefits to citizens of this state, including:

(i) a health insurer, nonprofit health service plan, health service corporation, employees' health and welfare fund, or preferred provider organization authorized to offer health insurance policies or contracts;

(ii) a health maintenance organization issued a certificate of authority in accordance with Title 33, chapter 31; or

(iii) a state agency"; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-106. Disclosure of utilization review requirements — drug benefit information.

Compiler's Comments

Effective Date — Applicability: Section 10, Ch. 470, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to plan years beginning on or after January 1, 2020."

Severability: Section 9, Ch. 470, L. 2019, was a severability clause.

33-32-107. Length of prior authorization.

Compiler's Comments

Effective Date — Applicability: Section 10, Ch. 470, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to plan years beginning on or after January 1, 2020."

Severability: Section 9, Ch. 470, L. 2019, was a severability clause.

Part 2

Utilization Review — Conduct

33-32-205. Corporate oversight of utilization review program.

Compiler's Comments

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-206. Responsibility for contracted services.

Compiler's Comments

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-207. Health insurance issuer duties for utilization review.

Compiler's Comments

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-208. Operational requirements.

Compiler's Comments

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-211. Procedures for standard utilization review and benefit determinations — notices.

Compiler's Comments

2019 Amendment: Chapter 470 in (1) in first sentence substituted "written procedures and clinical review criteria" for "written procedures, as provided in this section"; in (2)(a) in last sentence, (2)(c), and (2)(c)(ii) decreased notice period from 15 days to 7 business days; in (2)(a) at end inserted "or not later than 7 business days after the health insurance issuer receives all information under subsection (2)(d) necessary to make a determination"; in (2)(b) after "adverse determination" inserted "in writing"; in (3)(b) decreased the maximum notice period from 5 days to 3 days; and made minor changes in style. Amendment effective January 1, 2020.

Effective Date — Applicability: Section 10, Ch. 470, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to plan years beginning on or after January 1, 2020."

Severability: Section 9, Ch. 470, L. 2019, was a severability clause.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-212. Procedures for expedited utilization review and benefit determinations.

Compiler's Comments

2019 Amendment: Chapter 470 in (1) after "written procedures" inserted "and clinical review criteria"; in (3)(a) in last sentence decreased allowable notification time from 72 hours to 48 hours; in (4)(c) decreased allowable notification time from 48 hours to 24 hours; and in (6) in first sentence after "on the date" inserted "and at the time" and in second sentence after "date" inserted "and time". Amendment effective January 1, 2020.

Effective Date — Applicability: Section 10, Ch. 470, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to plan years beginning on or after January 1, 2020."

Severability: Section 9, Ch. 470, L. 2019, was a severability clause.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-215. Emergency services.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 33, Ch. 157, L. 2023. Amendment effective January 1, 2025.

2019 Amendment: Chapter 470 inserted (6) regarding requirement allowing at least 24 hours following an emergency admission or the provision of emergency services to notify the health insurance issuer; inserted (8) regarding opioid use disorder; and made minor changes in style. Amendment effective January 1, 2020.

Effective Date — Applicability: Section 10, Ch. 470, L. 2019, provided: "[This act] is effective January 1, 2020, and applies to plan years beginning on or after January 1, 2020."

Severability: Section 9, Ch. 470, L. 2019, was a severability clause.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-216. Confidentiality.

Compiler's Comments

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-217. Disclosure.

Compiler's Comments

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-221. Prior authorization requirements.

Compiler's Comments

Effective Date: Section 3, Ch. 680, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 19, 2023.

Applicability: Section 4, Ch. 680, L. 2023, provided: "[This act] applies to policies and plans that are issued or renewed on or after January 1, 2024."

Part 3
Grievance Procedures

Part Compiler's Comments

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-306. Grievance reporting and recordkeeping requirements — definition.

Compiler's Comments

2019 Amendment: Chapter 62 deleted former (7)(b)(v) that read: "(v) the number of grievances of which the health insurance issuer has been informed that were appealed to the commissioner"; and made minor changes in style. Amendment effective October 1, 2019.

Part 4
External Review

Part Compiler's Comments

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

33-32-403. Notice of right to external review.

Compiler's Comments

2017 Amendment: Chapter 151 in (4)(a)(iii)(B) near middle substituted "health care provider's certification" for "physician's certification". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

33-32-410. Standard external review.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) near beginning substituted "120 days" for "4 months". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

33-32-411. Expedited external review.

Compiler's Comments

Code Commissioner Correction: In (1) the code commissioner changed "subsection (12)" to "subsection (11)" to correct an erroneous reference.

33-32-412. External review of adverse determinations for experimental or investigational treatment — expedited external review.

Compiler's Comments

2017 Amendment: Chapter 151 in (1) near beginning substituted "120 days" for "4 months"; in (4)(d)(i) in two places substituted references to health care provider for references to physician; deleted former (11)(b) that read: "(b) make a decision, based on the opinion of the clinical peers, to uphold or reverse the adverse determination or final adverse determination"; in (21)(b) substituted "health care provider's" for "physician's or health care professional's"; in (21)(c) after "or the covered person's treating" deleted "physician or"; in (22)(a) at end deleted "and the commissioner"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

33-32-416. Approval of independent review organizations — renewal.

Compiler's Comments

2019 Amendment: Chapter 31 in (2)(b) inserted text requiring the submission of application fees or renewal fees and renewal applications; in (4)(a) in middle after "documentation" inserted "fees"; inserted (4)(b) requiring an independent review organization that is currently approved and seeking renewal to submit a renewal application, fees, and other information; inserted (6)(b) concerning the reporting requirements under 33-32-421; inserted (8) providing the penalty for an independent review organization's failure to fulfill reporting requirements; inserted (10) prohibiting a person from operating as an independent review organization in Montana unless approved by the commissioner; and made minor changes in style. Amendment effective October 1, 2019.

33-32-417. Minimum qualifications for independent review organizations.

Compiler's Comments

2017 Amendment: Chapter 151 in (2)(a) before "appropriate health care providers" deleted "physicians or other". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

33-32-419. Fees.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

33-32-421. External review reporting requirements.

Compiler's Comments

2019 Amendment: Chapter 31 deleted former (3)(f) that read: "(f) a record of the requests for external review that the health insurance issuer did not assign to a specific independent review organization according to the scheduled rotation due to lack of qualification"; and made minor changes in style. Amendment effective October 1, 2019.

33-32-423. Disclosure requirements.

Compiler's Comments

2017 Amendment: Chapter 151 in (2)(b) at end of first sentence substituted "health insurance issuer" for "commissioner". Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

CHAPTER 33
PROPERTY AND CASUALTY UTILIZATION REVIEW

Chapter Compiler's Comments

Effective Date: This chapter is effective October 1, 2001.

Part 1
General Provisions

33-33-102. Scope — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 34, Ch. 157, L. 2023. Amendment effective October 1, 2023.

33-33-103. Definitions.

Compiler's Comments

2015 Amendment: Chapter 428 in definition of utilization review substituted "33-32-102" for "33-32-102(4)"; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 42, Ch. 428, L. 2015, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 428, L. 2015, provided: "[This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8)."

Part 2
Standards

33-33-201. Standards for utilization review organizations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 35, Ch. 157, L. 2023. Amendment effective April 19, 2023.

33-33-202. Standards for property and casualty insurers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 36, Ch. 157, L. 2023. Amendment effective April 19, 2023.

CHAPTER 35
MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

Part 1
General Provisions

33-35-103. Definitions.

Compiler's Comments

2007 Amendment: Chapter 399 in definition of self-funded multiple employer welfare arrangement near end substituted "with a certificate of authority" for "licensed"; and made minor changes in style. Amendment effective May 3, 2007.

Part 2
Certificate of Authority

33-35-209. Minimum reserve requirements.

Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 452, L. 1995, provided: "A statement of intent is provided for this bill because [section 8] [33-35-209] requires the commissioner of insurance to adopt rules regarding supervision, rehabilitation, and liquidation of self-funded multiple employer welfare arrangements that fail to meet the minimum level of reserves required by [section 8] [33-35-209]. The rules adopted by the commissioner to implement [section 8] [33-35-209] should be consistent with Title 33, chapter 2, part 13, and should change the application of those provisions only to the extent necessary to be consistent with the purposes of this bill."

Administrative Rules

Title 6, chapter 6, subchapter 57, ARM Supervision, rehabilitation, and liquidation of self-funded multiple employer welfare arrangements.

Part 3
Enforcement

33-35-301. Reporting.

Compiler's Comments

2015 Amendment: Chapter 63 in (2)(e) at end of first sentence inserted exception clause; and made minor changes in style. Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

33-35-306. Application of insurance code to arrangements.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 88, L. 2023, in (1)(i) inserted "33-22-114" in list of statutory references. Amendment effective April 18, 2023.

Section 4, Ch. 179, L. 2023, in (1)(i) inserted "33-22-154" in list of statutory references. Amendment effective January 1, 2024.

Section 3, Ch. 463, L. 2023, in (1)(i) inserted "33-22-129" in list of statutory references. Amendment effective January 1, 2024.

Section 4, Ch. 520, L. 2023, inserted (1)(j) providing reference to 33-22-316; and made minor changes in style. Amendment effective January 1, 2024.

Section 4, Ch. 600, L. 2023, in (1)(i) inserted "33-22-155" in list of statutory references; and made minor changes in style. Amendment effective January 1, 2024.

Section 7, Ch. 782, L. 2023, in (1)(l) substituted "Title 33, chapter 22, parts 7 and 21" for "Title 33, chapter 22, part 7". Amendment effective January 1, 2024.

Applicability: Section 6, Ch. 463, L. 2023, provided: "[This act] applies to plans and policies issued on or after January 1, 2024."

Section 7, Ch. 600, L. 2023, provided: "[This act] applies to health care policies and plans issued or renewed on or after [the effective date of this act]." Effective January 1, 2024.

Section 12, Ch. 782, L. 2023, provided: "[This act] applies to insurance policies, certificates, and contracts issued or renewed on or after January 1, 2024."

Contingent Effective Date: Section 5, Ch. 323, L. 2021, provided: "[This act] is effective on the date that the commissioner of securities and insurance certifies to the code commissioner that regulations or guidance implementing the mental health and substance use disorder parity analysis requirements of Title II of Division BB of the federal Consolidated Appropriations Act, 2021 (P.L.116-260) is finalized. The commissioner of securities and insurance shall submit certification within 30 days of the occurrence of the contingency." On April 27, 2022, the commissioner of securities and insurance certified to the code commissioner that the contingency had occurred.

2021 Amendment: Chapter 209 in (1)(i) inserted "33-22-128" in list of statutory references. Amendment effective January 1, 2022.

Chapter 277 inserted (1)(k) concerning Title 33, chapter 22, part 7; and made minor changes in style. Amendment effective January 1, 2022.

Chapter 323 inserted (1)(l) regarding 33-22-707; and made minor changes in style. Amendment effective on occurrence of contingency.

Chapter 501 in (1)(d) inserted reference to Title 33, chapter 2, part 24. Amendment effective January 1, 2022.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Applicability: Section 7, Ch. 209, L. 2021, provided: "[This act] applies to health insurance plans and policies issued or renewed on or after January 1, 2022."

Section 6, Ch. 323, L. 2021, provided: "[This act] applies to insurance policies issued, modified, and renewed on or after [the effective date of this act]." Effective on occurrence of contingency.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

2017 Amendment: Chapter 231 inserted (1)(d) referencing Title 33, chapter 2, part 23; and made minor changes in style. Amendment effective April 25, 2017.

Chapter 245 inserted (1)(f) referencing Title 33, chapter 7; and made minor changes in style. Amendment effective January 1, 2018.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

2015 Amendment: Chapter 256 in (1)(g) inserted "33-22-139". Amendment effective January 1, 2016.

Applicability: Section 7, Ch. 256, L. 2015, provided: "[This act] applies to health insurance plans and policies issued or renewed on or after January 1, 2016."

2013 Amendments — Composite Section: Chapter 97 in (1)(g) inserted "33-22-153"; and made minor changes in style. Amendment effective March 27, 2013.

Chapter 164 in (1)(g) inserted "33-22-138"; and made minor changes in style. Amendment effective January 1, 2014.

Chapter 363 inserted (1)(i) concerning Title 33, chapter 40, part 1; and made minor changes in style. Amendment effective April 30, 2013, and terminates December 31, 2017.

2009 Amendment: Chapter 359 in (1)(h) inserted reference to 33-22-515. Amendment effective January 1, 2010.

Saving Clause: Section 7, Ch. 359, L. 2009, was a saving clause.

Applicability: Section 9, Ch. 359, L. 2009, provided: "[This act] applies to contracts or policies issued or renewed on or after [the effective date of this act]." Effective January 1, 2010.

2007 Amendments — Composite Section: Chapter 249 inserted (1)(a) referring to 33-1-111; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 356 in (1)(g) inserted reference to 33-22-152; and made minor changes in style. Amendment effective January 1, 2008.

Chapter 390 in (1)(h) at beginning inserted "33-22-512"; and made minor changes in style. Amendment effective January 1, 2008.

Chapter 399 in (1)(g) inserted references to 33-22-141 and 33-22-142; and made minor changes in style. Amendment effective May 3, 2007.

Applicability: Section 8, Ch. 390, L. 2007, provided: "[This act] applies to policies, certificates, evidence of coverage, and plans issued or renewed on or after January 1, 2008."

2003 Amendments — Composite Section: Chapter 380 inserted (1)(e) referring to Title 33, chapter 19; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 384 at beginning of (1)(f) inserted "33-22-107"; and made minor changes in style. Amendment effective January 1, 2004.

Effective Date — Applicability: Section 11, Ch. 384, L. 2003, provided: "[This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004."

1999 Amendment: Chapter 434 in (1)(e) inserted reference to 33-22-131; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 6, Ch. 434, L. 1999, provided that this section is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

1997 Amendments: Chapter 410 inserted (1)(e) referring to 33-22-134 and 33-22-135; and made minor changes in style.

Chapter 416 inserted (1)(f) referring to 33-22-525 and 33-22-526; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 410, L. 1997, provided: "[This act] is applicable to all contracts issued or renewed on or after January 1, 1998."

Section 52, Ch. 416, L. 1997, provided: "(1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40 [section 32 is 33-35-306], and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and group health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] [33-22-142] applies to events occurring after June 30, 1996."

CHAPTER 36
MANAGED CARE PLAN NETWORK ADEQUACY AND QUALITY ASSURANCE

Chapter Compiler's Comments

Transition: Section 55, Ch. 157, L. 2023, provided: "The department of public health and human services and the state auditor are authorized to transfer existing rules that implement the Managed Care Plan Network Adequacy and Quality Assurance Act, Title 33, chapter 36, to implement the provisions of [this act]."

1997 Statement of Intent: The statement of intent attached to Ch. 413, L. 1997, provided: "A statement of intent is required for this bill because [sections 12, 13, and 22] [33-36-105, 33-36-201, and 33-36-213] require rules to be adopted by the department of public health and human services.

The rules adopted by the department must establish state network adequacy and quality assurance standards for managed care plans that amplify [sections 8 through 29] [Title 33, ch. 36] and must provide greater detail regarding specific means by which a health carrier meets the requirements of [sections 8 through 29] [Title 33, ch. 36].

A managed care plan accredited by a nationally recognized organization is not required to meet some of the provisions of [sections 8 through 29] [Title 33, ch. 36], but the legislature acknowledges that small managed care plans may not be capable of meeting all of the accreditation requirements of national accrediting organizations.

In order to promote uniformity of standards applicable to all managed care plans, state quality assurance standards for small managed care plans must consist of standards that are appropriate for quality assurance in Montana.

The department may refer reports of noncompliance by a health carrier to the commissioner for corrective action. Under the department's rulemaking authority, the department shall specify network adequacy and quality assurance review processes.

[Section 19] [33-36-210] designates the department of public health and human services as the place for insurance carriers to file documents related to managed care provider network adequacy and quality assurance. The department shall adopt rules establishing procedures for filing these documents and shall adopt rules specifying processes for amending or withdrawing documents already filed that relate to network adequacy and quality assurance."

Severability: Section 31, Ch. 413, L. 1997, was a severability clause.

Applicability: Section 32, Ch. 413, L. 1997, provided: "[This act] applies to a health carrier as defined in [section 10] [33-36-103] who offers a managed care plan as defined in [section 10] [33-36-103] on or after [the effective date of this section]." Effective April 28, 1997.

Administrative Rules

Title 6, chapter 6, subchapter 89, ARM Quality assurance for managed care plans.

Part 1
General Provisions

Administrative Rules

Title 6, chapter 6, subchapter 88, ARM Network adequacy for managed care plans.

33-36-101. Short title.

Compiler's Comments

Effective Date: Section 33(1), Ch. 413, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998."

33-36-102. Purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 38, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(1), Ch. 413, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998."

33-36-103. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 39, Ch. 157, L. 2023, deleted former definition of department that read: ""Department" means the department of public health and human services established in 2-15-2201"; and made minor changes in style. Amendment effective January 1, 2024.

Section 3, Ch. 602, L. 2023, in definition of facility near middle substituted "critical access hospital, or rural emergency hospital, as those terms are defined in 50-5-101" for "or critical access hospital as defined in 50-5-101". Amendment effective July 1, 2023.

2007 Amendment: Chapter 502 in definition of facility near middle after "inpatient center" substituted "an outpatient center for surgical services, a treatment center" for "an ambulatory surgical or treatment center" and before "imaging center" inserted "diagnostic"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2001 Amendment: Chapter 192 in definition of facility near beginning after "medical assistance facility" inserted "or critical access hospital"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date: Section 33(1), Ch. 413, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998."

33-36-104. Applicability and scope.

Compiler's Comments

Effective Date: Section 33(1), Ch. 413, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998."

33-36-105. Commissioner — general powers and duties — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 40, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(2), Ch. 413, L. 1997, provided: "[Sections 12 [33-36-105], 22, and 30 through 32 and this section] are effective on passage and approval." Approved April 28, 1997.

Administrative Rules

Title 6, chapter 6, subchapter 89, ARM Quality assurance for managed care plans.

Part 2
Network Adequacy

33-36-201. Network adequacy — standards — access plan required.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 41, Ch. 157, L. 2023. Amendment effective April 19, 2023.

2003 Amendment: Chapter 325 in (1) at beginning of third sentence inserted exception clause; at beginning of (4) deleted former first sentence that read: "A health carrier offering a managed care plan in this state on October 1, 1999, shall file with the department on October 1, 1999, an access plan complying with subsection (6) and the rules of the department" and in first sentence after "state" deleted "for the first time after October 1, 1999"; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2009.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13 [33-36-201], 15, 18 through 21, and 23 through 29] are effective October 1, 1999."

33-36-202. Provider responsibility for care — contracts — prohibited collection practices.

Compiler's Comments

Effective Date: Section 33(1), Ch. 413, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998."

33-36-203. Selection of providers — professional credentials standards.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 42, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15 [33-36-203], 18 through 21, and 23 through 29] are effective October 1, 1999."

33-36-204. Health carriers — general responsibilities.

Compiler's Comments

Effective Date: Section 33(1), Ch. 413, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998."

33-36-205. Emergency services.

Compiler's Comments

2003 Amendment: Chapter 325 inserted (6) concerning limited coverage managed care plans. Amendment effective July 1, 2003, and terminates June 30, 2009.

Effective Date: Section 33(1), Ch. 413, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998."

33-36-209. Use of intermediaries — responsibilities of health carriers, intermediaries, and providers.

Compiler's Comments

2023 Amendment — Effective Dates: See 2023 Session Law for amendment made by sec. 43, Ch. 157, L. 2023. Section 57, Ch. 157, L. 2023, incorrectly provided two effective dates for sec. 43 of Ch. 157, one on passage and approval (April 19, 2023) and the other January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 [33-36-209] through 21, and 23 through 29] are effective October 1, 1999."

33-36-210. Contract filing requirements — material changes — state access to contracts.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 44, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21 [section 19 is 33-36-210], and 23 through 29] are effective October 1, 1999."

33-36-211. General contracting requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 45, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21 [section 20 is 33-36-211], and 23 through 29] are effective October 1, 1999."

33-36-212. Contract compliance dates.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 46, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21 [33-36-212], and 23 through 29] are effective October 1, 1999."

33-36-213. Rulemaking authority.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 47, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(2), Ch. 413, L. 1997, provided: "[Sections 12, 22 [33-36-213], and 30 through 32 and this section] are effective on passage and approval." Approved April 28, 1997.

Part 3
Quality Assurance

33-36-301. Quality assurance — national accreditation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 48, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21, and 23 [33-36-301] through 29] are effective October 1, 1999."

33-36-302. Standards for health carrier quality assessment programs.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 49, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21, and 23 through 29 [section 24 is 33-36-302]] are effective October 1, 1999."

33-36-303. Standards for health carrier quality improvement programs.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 50, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21, and 23 through 29 [section 25 is 33-36-303]] are effective October 1, 1999."

33-36-304. Reporting and disclosure requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 51, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21, and 23 through 29 [section 26 is 33-36-304]] are effective October 1, 1999."

33-36-305. Confidentiality of health care and quality assurance records — disclosure.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 52, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21, and 23 through 29 [section 27 is 33-36-305]] are effective October 1, 1999."

Part 4
Enforcement

33-36-401. Enforcement.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 53, Ch. 157, L. 2023. Amendment effective January 1, 2024.

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21, and 23 through 29 [section 28 is 33-36-401]] are effective October 1, 1999."

33-36-402. Jurisdiction over contract actions.

Compiler's Comments

Effective Date: Section 33(3), Ch. 413, L. 1997, provided: "[Sections 13, 15, 18 through 21, and 23 through 29 [33-36-402]] are effective October 1, 1999."

CHAPTER 38
MEDICAL CARE AND PHARMACY DISCOUNT CARDS

Part 1
General Provisions

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

Applicability: Section 14, Ch. 456, L. 2005, provided: "[Sections 4 through 11] [Title 33, ch. 38, part 1] apply to a person acting or intending to act as a medical care discount card supplier or enroller, a person acting or intending to act as a pharmacy discount card supplier, a medical care discount card issued, or a pharmacy discount card issued on and after October 1, 2005."

33-38-102. Definitions.

Compiler's Comments

2021 Amendment: Chapter 501 in definition of administrator inserted (b) including a pharmacy benefit manager. Amendment effective January 1, 2022.

Severability: Section 24, Ch. 501, L. 2021, was a severability clause.

33-38-105. Sale of medical care discount card by unregistered supplier prohibited — requirements for registration — list of authorized enrollers required — exceptions.

Compiler's Comments

2007 Amendment: Chapter 399 in (2) near end of second sentence after "regulation in" substituted "any" for "another"; in (3) at end of first sentence inserted "by December 31"; in (8) deleted former first sentence that read: "A person acting as a medical care discount card supplier on October 1, 2005, shall file a certificate of registration and a list of its authorized enrollers with the commissioner by that date", in first sentence after "business as a" inserted "medical care discount card" and after "supplier" deleted "after October 1, 2005", and at end of second sentence inserted "by December 31"; and made minor changes in style. Amendment effective May 3, 2007.

CHAPTER 39
INTERSTATE INSURANCE PRODUCT REGULATION

Part 1
Interstate Insurance Product Regulation Compact

Part Compiler's Comments

Effective Date: This part is effective October 1, 2013.

TITLE 34
RESERVED

TITLE 35
CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

CHAPTER 1
MONTANA BENEFIT CORPORATION ACT

Part 14
Benefit Corporations

Part Compiler's Comments

Effective Date: This part is effective October 1, 2015.

Saving Clause: Section 13, Ch. 306, L. 2015, was a saving clause.

35-1-1403. Purpose.

Compiler's Comments

2019 Amendment: Chapter 271 in (1) in second sentence near middle substituted "35-14-301" for "35-1-114"; and in (2) in first sentence near middle substituted "35-14-202" for "35-1-216". Amendment effective June 1, 2020.

35-1-1406. Benefit corporation governance — liability.

Compiler's Comments

2019 Amendment: Chapter 271 in (5) at end substituted "35-14-202(2)(d)" for "35-1-216(2)(d)". Amendment effective June 1, 2020.

35-1-1407. Conversion to benefit corporation.

Compiler's Comments

2019 Amendment: Chapter 271 in (1) at end substituted "35-14-1302" for "35-1-827". Amendment effective June 1, 2020.

35-1-1408. Termination — reorganization — other actions affecting benefit corporation.

Compiler's Comments

2019 Amendment: Chapter 271 in (1) and (4) at end substituted "35-14-1302" for "35-1-827". Amendment effective June 1, 2020.

CHAPTER 2
NONPROFIT CORPORATIONS

Chapter Official Comments

Source: The official comments contained in this chapter are those of the Corporate Law Review Committee of the State Bar of Montana.

Chapter Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 411, L. 1991, provided: "A statement of intent is required for this bill because it grants authority to the secretary of state to establish fees and mandate the use of forms. The fees established by the secretary of state must be commensurate with the cost of the service performed. The forms adopted should be based on forms recommended by this bill."

Severability: Section 178, Ch. 411, L. 1991, was a severability section.

Chapter Case Notes

Determination of Church Corporation Property Dispute Not Considered Interference With Establishment of Religion: Plaintiff, the Council, was organized in 1991 and incorporated in 1993 as a nonprofit corporation. The Council is the ultimate authority for the hierarchical denomination of the Baha'i faith known as the Baha'is Under the Provision of the Covenant. A controversy arose in the church over who was the leader of the faith and corporate president of the Council. Defendant Chase claimed the title. The Council brought a claim against Chase for wrongful interference with the conduct of the corporation and conversion of church property. Chase moved to dismiss on grounds that a judicial resolution of the church property dispute would require inquiry into and interpretation and application of religious doctrine, which is forbidden to civil courts by the first amendment to the U.S. Constitution, and the District Court agreed and dismissed the case. On appeal, the Supreme Court noted that states have a legitimate interest in the peaceful resolution of property disputes and that the civil courts are generally proper forums for those disputes, but also recognized that courts must exercise great care to avoid resolving disputes on the basis of religious doctrine and practice. The court cited Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar, 179 F3d 1244 (9th Cir. 1999), holding that a court may resolve church property disputes by applying neutral secular principles of property, trust, and corporate law when the instruments upon which those principles operate are at hand and that no first amendment issue arises when a court resolves a church property dispute by relying on state statutes concerning the holding of religious property, the language in the relevant deeds, and the terms of the religious organization's corporate charter. Although no civil court may presume to ascertain the proper successor to a religious office, the first amendment does not preclude a District Court from consulting corporate bylaws, state statutes, and general corporate property law to determine the powers of the Council presidency regarding the corporate property at issue. The case was reversed and remanded with instructions to the District Court to determine the composition of the Council and the powers of the presidency in relation to the church property and then, if those issues could be resolved on purely secular grounds, to apply corporate, property, and tort law in determining the merits of the Council's claims. Second Int'l Baha'i Council v. Chase, 2005 MT 30, 326 M 41, 106 P3d 1168 (2005), followed in New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc., 2014 MT 69, 374 Mont. 229, 328 P.3d 586.

Chapter Attorney General's Opinions

Rural Fire District Not to Incorporate Under Nonprofit Corporation Act: Although the formation and operation of nonprofit corporations are generally controlled by the Montana Nonprofit Corporation Act (Title 35, ch. 2), the particular process relating to the creation and operation of fire districts is specifically mandated by Title 7, ch. 33, part 21. Therefore, a rural fire district may not be established or reestablished and operated under this chapter in order to avoid personal liability. 43 A.G. Op. 2 (1989).

Part 1
General

Part Case Notes

DECISIONS PRIOR TO 1992 GENERAL REVISION

Nonprofit Corporation Not Exempt From Fair Labor Standards Act: The minimum wage and maximum hour provisions of the Fair Labor Standards Act (29 U.S.C. § 201, et seq.) are constitutionally applicable to a private nonprofit corporation providing services for mentally retarded persons and being funded in part by the state. Richland County Ass'n for Retarded Citizens v. Marshall, 660 F2d 388 (9th Cir. 1981).

Part Attorney General's Opinions

State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127 (1978).

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

35-2-113. Short title.

Compiler's Comments

Not Model Act: This section was not derived from the ABA Model Nonprofit Corporation Act.

35-2-114. Definitions.

Compiler's Comments

2015 Amendment: Chapter 280 in definition of foreign corporation inserted "including the laws of a federally recognized Indian tribe". Amendment effective April 23, 2015.

2013 Amendment: Chapter 190 inserted definitions of authenticated electronic identification, deliver or delivery, electronic, external communications, internal communications, present or presence, record, remote communication, sign or signed, and written or in writing; deleted definition that read: ""Deliver" includes mail"; substituted definition of vote or voting for ""Vote" includes authorization by written ballot and written consent"; and made minor changes in style. Amendment effective October 1, 2013.

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

Attorney General's Opinions

Authority for Creation of Public Benefit Nonprofit Corporation to Operate Electric and Natural Gas Utility Business: The Montana Nonprofit Corporation Act, Title 35, ch. 2, allows the creation of a public benefit nonprofit corporation and an interlocal agreement creating a corporation as the nonprofit corporation's sole member to operate an electric and natural gas utility. The authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise. 51 A.G. Op. 5 (2005). See also 48 A.G. Op. 14 (2000).

35-2-115. Notice.

Official Comments

Official Comments: There is no comparable inclusive MCA section, instead the MCA includes scattered sections dealing with notice. The MCA makes no allowance for oral communications. Substantial flexibility is necessary for nonprofit corporations when notifying their members. Many membership organizations notify members of meetings by newsletter, church bulletin or even word of mouth. Members of these organizations do not expect notice by mail.

Compiler's Comments

2013 Amendment: Chapter 190 in (2)(a) inserted "electronic"; in (3) inserted "delivered or"; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 240 in (4)(a) at end deleted "at its registered office". Amendment effective October 1, 2008.

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-116. Reservation of power to amend or repeal.

Official Comments

Official Comments: The purpose of § 1.02 [this section] is to avoid any possible argument that a corporation has contractual or vested rights in any specific statutory provision and to ensure that the state may in the future modify its nonprofit corporation statutes as it deems appropriate and require existing corporations to comply with the statutes as modified.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-117. Purposes.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-118. General powers.

Official Comments

Official Comments: Section 3.02(16) [subsection (1)(p) of this section] allows a nonprofit corporation to operate a business. According to the ABA Official Comments: "The business must be consistent with or aid the purposes of the corporation." This change is consistent with current case law. See, e.g., Olsen v. National Memorial Gardens, Inc., 115 N.W.3d 312, 366 Mich. 492 (1962). Section 3.02(14) & (15) [subsections (1)(n) and (1)(o) of this section] allow a nonprofit corporation to establish conditions for memberships. The ABA Official Comments state: "These provisions do not validate all admission requirements but simply provide that a corporation has the power to set conditions. Whether the conditions are legal depends on applicable federal and state law." Subsection (b) [subsection (2) of this section] is not in the RMNCA, but is from MCA § 35-2-105 [now repealed].

Compiler's Comments

2013 Amendment: Chapter 264 inserted (1)(q) regarding service as trustee; and made minor changes in style. Amendment effective October 1, 2013.

Severability: Section 161, Ch. 264, L. 2013, was a severability clause.

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

Case Notes

DECISIONS AFTER 1992 GENERAL REVISION

Determination of Church Corporation Property Dispute Not Considered Interference With Establishment of Religion: Plaintiff, the Council, was organized in 1991 and incorporated in 1993 as a nonprofit corporation. The Council is the ultimate authority for the hierarchical denomination of the Baha'i faith known as the Baha'is Under the Provision of the Covenant. A controversy arose in the church over who was the leader of the faith and corporate president of the Council. Defendant Chase claimed the title. The Council brought a claim against Chase for wrongful interference with the conduct of the corporation and conversion of church property. Chase moved to dismiss on grounds that a judicial resolution of the church property dispute would require inquiry into and interpretation and application of religious doctrine, which is forbidden to civil courts by the first amendment to the U.S. Constitution, and the District Court agreed and dismissed the case. On appeal, the Supreme Court noted that states have a legitimate interest in the peaceful resolution of property disputes and that the civil courts are generally proper forums for those disputes, but also recognized that courts must exercise great care to avoid resolving disputes on the basis of religious doctrine and practice. The court cited Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar, 179 F3d 1244 (9th Cir. 1999), holding that a court may resolve church property disputes by applying neutral secular principles of property, trust, and corporate law when the instruments upon which those principles operate are at hand and that no first amendment issue arises when a court resolves a church property dispute by relying on state statutes concerning the holding of religious property, the language in the relevant deeds, and the terms of the religious organization's corporate charter. Although no civil court may presume to ascertain the proper successor to a religious office, the first amendment does not preclude a District Court from consulting corporate bylaws, state statutes, and general corporate property law to determine the powers of the Council presidency regarding the corporate property at issue. The case was reversed and remanded with instructions to the District Court to determine the composition of the Council and the powers of the presidency in relation to the church property and then, if those issues could be resolved on purely secular grounds, to apply corporate, property, and tort law in determining the merits of the Council's claims. Second Int'l Baha'i Council v. Chase, 2005 MT 30, 326 M 41, 106 P3d 1168 (2005), followed in New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc., 2014 MT 69, 374 Mont. 229, 328 P.3d 586.

DECISIONS PRIOR TO 1992 GENERAL REVISION

Abatement of Activities for Violation of Gambling Laws: A bona fide corporation organized under sections 15-1401 through 15-1409, R.C.M. 1947 (now repealed), could legally permit gambling among its members but could not permit any person or persons other than its members to participate in such gambling. When Attorney General sought to abate corporation's activities on ground it permitted nonmembers to gamble at will, propriety of such action was upheld against contention that proceeding in quo warranto was the proper remedy. State ex rel. Bottomly v. District Court, 115 M 400, 143 P2d 559 (1943).

Bequest — Power to Take: A religious society organized and having its domicile in the state of Minnesota may under the laws of that state, similar to those of Montana as set out in sections 15-1402 and 15-1403, R.C.M. 1947 (now repealed), take a bequest made to it by a resident testator capable of making the will. In re Hauge's Estate, 92 M 36, 9 P2d 1065 (1932).

Attorney General's Opinions

Authority for Creation of Public Benefit Nonprofit Corporation to Operate Electric and Natural Gas Utility Business: The Montana Nonprofit Corporation Act, Title 35, ch. 2, allows the creation of a public benefit nonprofit corporation and an interlocal agreement creating a corporation as the nonprofit corporation's sole member to operate an electric and natural gas utility. The authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise. 51 A.G. Op. 5 (2005). See also 48 A.G. Op. 14 (2000).

State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127 (1978).

35-2-119. Filing requirements.

Official Comments

Official Comments: The MCA contains no comparable section which delineates an all inclusive list of document filing requirements. Instead, those MCA sections requiring filing contain sections setting forth document filing requirements for particular filings.

Section 1.20 [this section] standardizes the filing requirements for all documents required or permitted by the RMNCA, instead of enumerating the filing requirements in different parts as the MCA does. Other sections of RMNCA impose additional requirements which also must be complied with if a certain document is to be filed, as does the MCA. Section 1.20 [this section] of the RMNCA has been modified to include provisions on fax filing similar to the existing provisions of the MCA.

Compiler's Comments

2017 Amendment: Chapter 151 in (8) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendment: Chapter 42 in (4) deleted last sentence that read: "The certificate of existence required of foreign corporations does not need to be in English if it is accompanied by a reasonably authenticated English translation." Amendment effective February 18, 2015.

2013 Amendment: Chapter 190 in (3) inserted "unless an electronic form is allowed by the secretary of state". Amendment effective October 1, 2013.

2007 Amendment: Chapter 33 in (5)(a) at beginning inserted exception clause; inserted (5)(b) regarding execution of a corporation's annual report and defining authorized agent; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 71 deleted former (8)(a) that read: "(a) one copy, except as provided in 35-2-311 and 35-2-829"; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

Administrative Rules

ARM 44.5.114 Corporations — profit and nonprofit fees.

ARM 44.5.121 Miscellaneous fees.

35-2-120. Facsimile filing.

Compiler's Comments

1997 Amendment: Chapter 290 at end of first sentence in (1) deleted "provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy"; deleted (2) through (4) that read: "A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void"; and made minor changes in style. Amendment effective April 18, 1997.

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-121. Effective date of document.

Official Comments

Official Comments: Section 1.23 [this section] provides the effective date for all documents, instead of describing the effective date in different parts as the MCA does.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-122. Correcting filed document.

Official Comments

Official Comments: Section 1.24 [this section] would be an addition to the MCA. Section 1.24 [this section] permits making corrections in filed documents without refiling the entire document or submitting formal articles of amendment. The correction procedure may be less expensive than refiling the document or filing articles of amendment. Articles of correction do not alter the effective date of the underlying document.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-123. Penalty for signing false documents.

Official Comments

Official Comments: This section is not from the RMNCA. MCA § 35-2-413 [now repealed] of the existing law should be retained [substance of text now in 45-7-202 and this section].

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-126. Designation of status of nonprofit corporations.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

Termination Date: Section 181, Ch. 411, L. 1991, provided: "[Section 16(3) and section 173] [35-2-126(3) and 35-2-133] terminate January 1, 1996."

35-2-127. Private foundations.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-128. Religious corporations — constitutional protections.

Official Comments

Official Comments: Section 1.80 [this section] would be an addition to the MCA. The RMNCA limits state intrusion and restrictions upon religious corporations, yet it still provides an orderly structure in which religious corporations can be formed and operated.

The ABA Official Comments state:

While in one sense section 1.80 [this section] simply states the obvious, it is helpful to remind those dealing with religious corporations that they must consider constitutional mandates. The approach of section 1.80 [this section] also allows a case-by-case determination of difficult questions and automatically conforms the Model Acts to the opinions of the United States Supreme Court and the applicable state courts.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

Case Notes

DECISIONS PRIOR TO 1992 GENERAL REVISION

Authority to Sell: If there is no constitution or bylaws of the religious corporation, the trustees cannot sell the church building without a resolution adopted by the members authorizing them to do so. Smith v. St. John Baptist Church of Bozeman, 123 M 264, 211 P2d 975 (1949).

35-2-129. Limit on nonprofit corporation requirements.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

35-2-130. Judicial relief.

Official Comments

Official Comments: Section 1.60 [this section] would be an addition to the MCA. The ABA Official Comments describe the reasons for this section:

Section 1.60 [this section] provides an escape valve allowing nonprofit corporations to conduct meetings or obtain the consent of members, delegates or directors when it is otherwise impractical or impossible to do so. For example, a corporation may have a high quorum requirement preventing it from holding a meeting of members because the required number of members won't attend a meeting. It may have inaccurate records and be unable to identify its members or directors. The section allows directors, officers, delegates, members or the attorney general to petition the appropriate court for an order allowing the members or directors to vote or hold a meeting even if the order dispenses with requirements of the Model Act, the articles or bylaws concerning voting or holding meetings. The court in exercising its discretion should provide a procedure that is fair and equitable under all the circumstances.

Compiler's Comments

2007 Amendment: Chapter 240 in (1) near end after "in which the" substituted "principal office" for "registered office" and after "located" inserted "or, if the principal office is not located in this state, in Lewis and Clark County". Amendment effective October 1, 2008.

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-131. Attorney general.

Official Comments

Official Comments: Section 1.70 [this section] would be an addition to the MCA. Section 1.70 [this section] allows the attorney general to intervene or commence a proceeding to protect the public interest. The attorney general has limited powers to regulate mutual benefit and religious corporations, but the powers are expanded to provide proper supervision over public benefit corporations. In a public benefit corporation members generally have no personal economic incentive to monitor corporate activities and prevent abuses. Members and contributors may have an incentive to monitor corporate activities but they may not have the practical means to do so.

Reports of fraud within charitable institutions are common place in the news. See Stienberg, "Economic Perspectives on Regulation of Charitable Solicitation, 39 Case W. Res. L. Rev. 775 (1989). Empowering the attorney general to intervene in certain affairs of nonprofit organizations to protect against abuses is not new. See 2 Blackstone's Commentaries on the Laws of England 334 (1872). Under existing statutory law, the attorney general may dissolve a corporation if it acts in an unauthorized way or may commence action to enjoin the corporation from performing unauthorized acts. MCA § 35-2-110(3) [now repealed]. The power of the attorney general to intervene in the affairs of a charitable organization that fails to act in accordance with its purpose has been well established in other jurisdictions. Brown v. Concerned Citizens for Sickle Cell Anemia, Inc., 56 Ohio St. 2d 85, 382 N.E.2d 1155 (1978). See generally, 15 Am.Jur. (Charities) § 144 (1976). The rationale for the traditional rule that attorney generals are allowed to intervene is the same as the rationale for applicable provisions of the RMNCA: the attorney general represents the interest of the public in insuring that a charitable organization acts in such a way as to accomplish its charitable purpose.

The preliminary position of the Montana Attorney General is that changes in the law are "sensible and appropriate." He notes that the changes "are somewhat similar to the recent authority given the Attorney General in the area of charitable trusts." Letter from Marc Racicot to Steven Bahls dated January 9, 1990.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-132. Ultra vires.

Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

Part 2
Formation — Articles of Incorporation Bylaws — Amendments

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-213. Articles of incorporation.

Official Comments

Official Comments: In § 2.02(a)(2) [subsection (1)(b) of this section] the incorporators must choose the category of nonprofit corporation they believe is most appropriate for the corporation's intended activities. Once having chosen a category, mutual benefit, public benefit or religious corporation, the corporations is required to abide by the rules applicable to that category. The statutes provide an incentive to choose the appropriate category and a disincentive to choose an inappropriate category. See M. Hone, Revised Model Nonprofit Corporation Act xxii-xxiii (1987).

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(d) before "address" inserted "business mailing"; and in (2)(b) before "addresses" inserted "business mailing". Amendment effective October 1, 2011.

2007 Amendment: Chapter 240 substituted (1)(c) concerning information required by 35-7-105(1) for former text that read: "(c) (i) the street address of the corporation's initial registered office and, if different, the mailing address; and

(ii) the name of its initial registered agent at that office". Amendment effective October 1, 2008.

Attorney General's Opinions

Authority for Creation of Public Benefit Nonprofit Corporation to Operate Electric and Natural Gas Utility Business: The Montana Nonprofit Corporation Act, Title 35, ch. 2, allows the creation of a public benefit nonprofit corporation and an interlocal agreement creating a corporation as the nonprofit corporation's sole member to operate an electric and natural gas utility. The authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise. 51 A.G. Op. 5 (2005). See also 48 A.G. Op. 14 (2000).

35-2-215. Liability for preincorporation transactions.

Official Comments

Official Comments: Section 2.04 [this section] corresponds to MCA § 35-2-109 [now repealed]. MCA § 35-2-109 [now repealed] is broader than RMNCA § 2.02 [evidently this was intended to refer to § 2.04, now this section]; MCA § 35-2-109 [now repealed] provides that all persons who assume to act as a corporation and without authority to do so are jointly and severally liable.

35-2-217. Bylaws.

Case Notes

Contractual Dispute — Harmless Error: The District Court erroneously concluded that a special assessment described in a subdivision association's bylaws as "applicable to that year only" had to be used as well as assessed within the year, but the error was harmless because it did not affect the outcome of the case. Beebe v. Bd. of Directors of the Bridger Creek Subdivision Community Ass'n, 2015 MT 183, 379 Mont. 484, 352 P.3d 1094.

35-2-218. Emergency bylaws and powers.

Official Comments

Official Comments: Section 2.07 [this section] would be an addition to the MCA. The emergency bylaws of § 2.07 [this section] provide special procedures for the management of a corporation during a catastrophe.

35-2-222. Amendment by directors.

Compiler's Comments

2007 Amendment: Chapter 240 substituted (1)(c) concerning information required by 35-7-105(1) for former text that read: "to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state". Amendment effective October 1, 2008.

35-2-224. Class voting by members on amendments.

Official Comments

Official Comments: Section 10.04 [this section] would be an addition to the MCA. Section 10.04 [this section] is necessary since the RMNCA allows a nonprofit corporation to have different classes of members.

35-2-226. Restated articles of incorporation.

Compiler's Comments

1999 Amendment: Chapter 229 at end of (8) substituted "a statement of whether the restated articles were approved by the board, the members, or any other person" for former (8)(a) that read: "(a) whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement"; inserted (8)(c) requiring statement as to whether approval is made by board or other person if no member approval on restatement is required; and made minor changes in style. Amendment effective April 2, 1999.

35-2-227. Amendment pursuant to judicial reorganization.

Official Comments

Official Comments: Section 10.07 [this section] would be an addition to the MCA. It corresponds to changes in the RMBCA. Section 10.07 [this section] updates the nonprofit corporate law to bring it in conformity with other legal developments.

35-2-229. Amendment by directors.

Official Comments

Official Comments: Section 10.20 [this section] would be an addition to the MCA. Section 10.20 [this section] allows directors in a nonprofit corporation without members to amend the bylaws, unless the articles of incorporation require approval by a specific person(s).

35-2-230. Amendment by directors and members.

Official Comments

Official Comments: Section 10.21 [this section] would be an addition to the MCA. Section 10.21 [this section] applies to nonprofit corporations with members. Since the basic rights of members are usually set forth in a nonprofit corporation's bylaws and not its articles, the RMNCA requires the same vote to amend bylaws or articles.

35-2-231. Class voting by members on amendments.

Official Comments

Official Comments: Section 10.22 [this section] would be an addition to the MCA. Section 10.22 [this section] is necessary since the RMNCA allows a nonprofit corporation to have different classes of members.

35-2-232. Approval by third persons.

Official Comments

Official Comments: Section 10.30 [this section] would be an addition to the MCA. Section 10.30 [this section] provides flexibility in control over amendments by allowing parent or affiliated corporations and others (government bodies, bishops, etc.) a veto power over amendments. The veto power must be provided for in the articles of incorporation.

35-2-233. Amendment terminating members or redeeming or canceling memberships.

Official Comments

Official Comments: Section 10.31 [this section] is an optional section under the RMNCA. Section 10.31 [this section] would be an addition to the MCA. These procedures are in addition to the normal requirements for amending articles or bylaws and are required due to the extraordinary nature of the amendment. The rationale for this optional section is set forth by the ABA as follows:

"Some public benefit corporations may decide that the benefits of having members are outweighed by the costs, possible harassment, or lack of contribution by members. If so, section 10.31 [this section] provides a method of amending articles or bylaws to convert from a membership corporation to a corporation with a self-perpetuating board of directors . . . ."

Compiler's Comments

2013 Amendment: Chapter 190 in (3) substituted "production, mailing, or electronic transaction" for "production and mailing". Amendment effective October 1, 2013.

Part 3
Corporate Name, Registered Office and Agent, and Service of Process

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-305. Corporate name.

Official Comments

Official Comments: Section 4.01(c), (d) & (e) [subsections (3), (4), and (5) of this section] would be additions to the MCA, in order to add clarity to the law.

Compiler's Comments

2001 Amendment: Chapter 27 inserted (1)(b) prohibiting the use of a business name identifier in a corporate name; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendment: Chapter 120 in (2)(e) inserted reference to limited liability company name.

35-2-307. Registered name of foreign corporation.

Official Comments

Official Comments: Section 4.03 [this section] would be an addition to the MCA. This section allows a foreign corporation to reserve the right to qualify its name if it subsequently decides to do so.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 42 in (2)(b) substituted requirement for statement of compliance for foreign corporation for former (2)(b) that read: "(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation"; and made minor changes in style. Amendment effective February 18, 2015.

Chapter 280 in (2)(a) and (2)(b) (deleted by Ch. 42) after "state" inserted "tribe". Amendment effective April 23, 2015.

Part 4
Directors and Officers — Indemnification

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

Part Case Notes

DECISIONS PRIOR TO 1992 GENERAL REVISION

Absence of Provisions in Articles of Incorporation for Removal of Board of Directors — Actions by Subsequent Board Invalid: Under former 35-2-403, when there were no provisions in the articles of incorporation of a home owners' association regarding the removal from office of the board of directors, any actions taken by a new board appointed without authority were invalid and unenforceable. Trieweiler v. Spicher, 254 M 321, 838 P2d 382 (1992).

35-2-414. Requirement for and duties of board.

Official Comments

Official Comments: Section 8.01(c) [subsection (3) of this section] would be an addition to the MCA. Section 8.01(c) [subsection (3) of this section] allows considerable flexibility in structuring nonprofit corporations. The ABA Official Comments state:

Boards of nonprofit corporations are sometimes called boards of trustees, regents, overseers, or by some other name. Section 8.01 [this section] applies to the person or group under whose authority corporate powers are exercised and under whose directions the affairs of the corporation are managed, regardless of the name of the person or group.

35-2-416. General standards for directors.

Official Comments

Official Comments: This section would be an addition to the MCA. The ABA Official Comments explain the purpose of the statute:

Section 8.30(a) [subsection (1) of this section] sets forth the general standards of conduct for directors of nonprofit corporations. It settles the dispute as to whether directors of nonprofit corporations should meet the general business standards or the trustee standards. See "Duties of Charitable Trust, Trustee and Charitable Corporation Directors," Real Property, Probate and Trust Journal 545 (1967); Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries, 381 F. Supp. 1003 (D.D.C. 1974). Also see Official Comment to Section 8.30 of the Model Business Corporation Act.

In Montana, MCA § 27-1-732 provides many nonprofit corporation directors even broader protection than provided in § 8.30 [this section]. Section 8.30 [this section] would control in those cases not governed by MCA § 27-1-732. Those cases would primarily be:

(a) Cases involving Chapter 2, Title 35 that are not governed by MCA § 27-1-732. MCA § 27-1-732 does not govern corporations that are not tax exempt under IRC § 501(c) or MCA § 15-31-102.

(b) Cases involving claims for equitable relief.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-2-418. Director conflict of interest.

Official Comments

Official Comments: Section 8.31 [this section] would be an addition to the current MCA. This section, although not as detailed as the corresponding sections of the RMBCA, is consistent with the general philosophy that, within limits, duties of directors should be defined by statute. It is particularly important to do so for charitable corporations because of the strict trust concept, adopted at common law, that interested directors can never obtain a profit when dealing with the nonprofit corporation.

35-2-420. Resignation of directors.

Official Comments

Official Comments: Section 8.07 [this section] would be an addition to the MCA. Directors should be provided with a procedure for resignation. The ABA Official Comments state: "Under appropriate circumstances a court may find that an oral resignation combined with acts or omissions evidencing an intent to resign results in an effective resignation."

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 339, L. 2023. Amendment effective October 1, 2023.

35-2-421. Removal of directors elected by members or directors.

Official Comments

Official Comments: Section 8.08 [this section] is an addition to the MCA and adds needed clarity to the law. Under § 8.08 [this section] members are all authorized to remove directors elected by them without cause. The ABA Official Comments state: "If a board of directors is self-perpetuating or if it elects some of its members, the board may remove the directors it has elected without cause by a vote of two-thirds of the directors in office. . . . The articles or bylaws may require a greater vote requirement to remove directors. . . . Section 8.08 [this section] allows the articles or bylaws to authorize the board to remove any director for failing to attend a specified number of meetings. The exact number of meetings must be specified in the articles or bylaws at the time the director commences serving the term. . . ."

35-2-423. Removal of directors by judicial proceeding.

Official Comments

Official Comments: Section 8.10 [this section] would be an addition to the MCA. This section authorizes members holding 10 percent or more of the voting power of any class to sue to remove a director, and sets forth the grounds for court removal of an elected, designated or appointed director.

Compiler's Comments

2007 Amendment: Chapter 240 in (1) near middle substituted "Lewis and Clark County" for "the county where its registered office is located". Amendment effective October 1, 2008.

35-2-427. Regular and special meetings.

Official Comments

Official Comments: Section 8.20 (a) & (c) [subsections (1) and (3) of this section] would be additions to the MCA. These sections clarify the law and provide a corporation with flexibility as meetings by directors may be conducted by telephone conference calls.

35-2-429. Call and notice of meetings.

Official Comments

Official Comments: Section 8.22 [this section] would be an addition to the MCA. Section 8.22 [this section] clarifies the notice requirements for different types of meetings.

Compiler's Comments

1999 Amendment: Chapter 51 in (2) near beginning substituted "special meetings" for "regular meetings". Amendment effective March 15, 1999.

35-2-436. Liability for unlawful distributions.

Official Comments

Official Comments: Section 8.33 [this section] provides the corporation with the means to recover an improper distribution. Section 8.33 [this section] would be an addition to the MCA. Section 8.33 [this section] is consistent with the RMNCA's policy to prevent the improper diversion of assets.

35-2-439. Required officers.

Official Comments

Official Comments: Section 8.40(b) [subsection (2) of this section] would be an addition to the MCA. The provision clarifies existing common law.

35-2-440. Duties and authority of officers.

Official Comments

Official Comments: Section 8.41 [this section] would be an addition to the MCA. The provision clarifies the authority of officers.

35-2-441. Standards of conduct for officers.

Official Comments

Official Comments: Section 8.42 [this section] would be an addition to the MCA. This section is consistent with the committee's addition to the RMBCA. Under Section 8.42 [this section] nondirector officers with discretionary authority have the same general duty of care and loyalty as directors. This standard of conduct is particularly important in nonprofit corporations when the board of directors is composed of volunteers and the full-time paid officers have important and significant duties.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-2-443. Contract rights of officers.

Official Comments

Official Comments: This section is not intended to limit any rights the officer might have under the Montana Wrongful Discharge Act.

35-2-444. Officers' authority to execute documents.

Official Comments

Official Comments: Section 8.45 [this section] would be an addition to the MCA. The ABA comments state:

Section 8.45 [this section] is a safe harbor that does not diminish the apparent authority officers may have under common law.

Section 8.45 [this section] allows third persons to rely on the signatures of specified officers of a nonprofit corporation as indicating authority to act on behalf of the corporation unless the third persons have actual knowledge that the signing officers have no authority. This provision is particularly helpful in the nonprofit context where the authority of officers may be less than clear.

35-2-446. Definitions.

Official Comments

Official Comments: Section 8.50 [this section] would be an addition to the MCA.

The RMNCA indemnification provisions are similar to the RMBCA provisions adopted by the committee. Indemnification provisions are particularly important in the nonprofit setting as they establish essential guidelines for conflicts between protecting the directors and protecting the public interests from which nonprofit corporations evolve. The MCA's failure to provide more guidance concerning indemnification is a glaring deficiency in Montana's current nonprofit law.

35-2-447. Authority to indemnify.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-2-448. Mandatory indemnification.

Official Comments

Official Comments: Section 8.52 [this section] would be an addition to the MCA.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

35-2-449. Advance for expenses.

Official Comments

Official Comments: Section 8.53 [this section] would be an addition to the MCA.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-2-450. Court-ordered indemnification.

Official Comments

Official Comments: Section 8.54 [this section] would be an addition to the MCA.

35-2-451. Determination and authorization of indemnification.

Official Comments

Official Comments: Section 8.55 [this section] would be an addition to the MCA.

35-2-452. Indemnification of officers, employees, and agents.

Official Comments

Official Comments: Section 8.56 [this section] would be an addition to the MCA. The MCA does not specifically provide for indemnification to employees and agents.

35-2-453. Insurance.

Official Comments

Official Comments: Section 8.57 [this section] would be an addition to the MCA.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-2-454. Application.

Official Comments

Official Comments: Section 8.58 [this section] would be an addition to the MCA.

Part 5

Members — Delegates — Voting

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-510. Admission.

Official Comments

Official Comments: Section 6.01(b) [subsection (2) of this section] would be an addition to the MCA. This provision prevents a corporation from naming people as members without knowing or having the ability to identify individual members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

35-2-511. Consideration.

Official Comments

Official Comments: Section 6.02 [this section] would be an addition to the MCA. This provisions [sic] provides corporations flexibility in supporting the organization and its objectives.

35-2-512. No requirement of members.

Official Comments

Official Comments: RMNCA § 2.02(5) [35-2-213(1)(e)] requires a corporation to set forth in its articles of incorporation whether or not the corporation will have members.

35-2-514. Transfers.

Official Comments

Official Comments: Section 6.11 [this section] would be an addition to the MCA. The ABA Official Comments set forth the reasons for this section:

Subdivision (a) [subsection (1) of this section] provides that a membership in a mutual benefit corporation cannot be transferred unless the articles or bylaws provide for transfers. This comports with the reasonable expectations of members of most mutual benefit corporations. A corporation's articles or bylaws may provide for transfers if the members want transferable memberships. The articles or bylaws may impose limitations, conditions, and fees as a condition to transferring memberships.

Subdivision (b) [subsection (2) of this section] reinforces the concept that memberships in public benefit and religious corporations are not securities, do not represent a valuable asset, are personal to each member, and should not be sold for value. Moreover, subdivision (b) [subsection (2) of this section] prohibits a member of a public benefit or religious corporation from giving a membership to another person. This prevents members from passing membership rights to their friends or relatives without regard to their qualifications.

Subdivision (c) [subsection (3) of this section] is particularly important to members of mutual benefit corporations if their memberships represent a valuable asset. It provides that no restriction on transfer can be imposed after the fact without approval of the members and the affected member. A class vote may be required. See sections 10.04, 10.05, 10.21 and 10.22 [35-2-224, 35-2-225, 35-2-230, and 35-2-231].

35-2-517. Member's liability for dues, assessments, and fees.

Official Comments

Official Comments: Section 6.13 [this section] would be an addition to the current MCA. The purpose of § 6.13 [this section] is to impose liability on members for dues, assessment fees that have been consented to.

35-2-518. Creditor's action against member.

Official Comments

Official Comments: Section 6.14 [this section] would be an addition to the MCA. Section 6.14 [this section] provides an unsatisfied creditor of a corporation with the ability to sue a member for the member's liability to the corporation arising from dues, assessments and fees to which the member has consented.

35-2-519. Resignation.

Official Comments

Official Comments: Section 6.20 [this section] would be an addition to the MCA. It sets forth the fundamental right of a member to resign.

35-2-520. Termination, expulsion, and suspension.

Official Comments

Official Comments: Section 6.21 [this section] would be an addition to the MCA. Section 6.21 [this section] codifies judicially developed requirements and provides a procedural safe harbor.

The approach of requiring nonprofit organizations to provide their members with some degree of due process is consistent with the Montana Supreme Court case of Johnson v. Green Meadows [sic] Country Club, [222] Mont. [405], 721 P.2d 1287 (1986) which stated:

We agree with what the Florida Court said when faced with the same question:

. . . courts should leave to the members of a private social club or to the proper board to which the members have lawfully delegated that power, the right to determine whether the action of a member has been such that, in the opinion of such Board, it would interfere with the pleasant, friendly, congenial social relationship between members. In the absence of a clear allegation and convincing proof, if the case reaches that stage, of fraud or bad faith, the action of the members or duly delegated board shall not be reviewed by the courts.

Everglades Protective Syndicate v. McKinney (Fla. App. 1980), 391 So.2d 262, 265, citing State ex rel. Barfield v. Florida Yacht Club (Fla. App. 1958), 106 So.2d 207, 211.

Compiler's Comments

2013 Amendment: Chapter 190 in (3)(a) at beginning inserted exception clause; inserted (3)(b) regarding notice to any authenticated electronic identification; and made minor changes in style. Amendment effective October 1, 2013.

Attorney General's Opinions

Authority for Creation of Public Benefit Nonprofit Corporation to Operate Electric and Natural Gas Utility Business: The Montana Nonprofit Corporation Act, Title 35, ch. 2, allows the creation of a public benefit nonprofit corporation and an interlocal agreement creating a corporation as the nonprofit corporation's sole member to operate an electric and natural gas utility. The authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise. 51 A.G. Op. 5 (2005). See also 48 A.G. Op. 14 (2000).

35-2-522. Purchase of memberships.

Official Comments

Official Comments: This section is an addition to the existing law. The ABA Official Comments aptly describe the necessity for this section: "The assets of public benefit and religious corporations are held for a public charitable or religious purpose and may not be distributed to members during operations or upon dissolution. Allowing these corporations to purchase memberships would invite evasion of this rule."

35-2-524. Delegates.

Official Comments

Official Comments: Section 6.40 [this section] would be an addition to the MCA. Section 6.40 [this section] authorizes corporations to operate with delegates rather than or in addition to members or a self-perpetuating board.

According to the ABA Official Comments: "The law in regard to delegates and their rights is not as well developed as that relating to members or self-perpetuating boards. For this reason, section 6.40 [this section] does not set forth detailed provisions. Instead, § 6.40 [this section] authorizes the articles or bylaws to set forth the rules regarding delegates.

35-2-525. Homeowners association — remote meetings.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

35-2-526. Annual and regular meetings.

Official Comments

Official Comments: Section 7.01(d) & (e) [subsections (4) and (5) of this section] would be an addition to the MCA. Under these circumstances actions taken by members at the annual meeting or regular meetings must be consistent with notice requirements.

Compiler's Comments

2021 Amendment: Chapter 185 in (3) at beginning of third sentence and in (7) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective October 1, 2021.

2013 Amendment: Chapter 190 in (3) inserted last sentence allowing annual meeting held solely by remote communication; in (7) at beginning deleted "If the corporation has 50 or fewer members and", after "similar" substituted "remote communication" for "communication equipment through which all persons participating in the meeting can hear each other at the same time", and in last sentence inserted "Unless otherwise provided in the articles or bylaws"; and made minor changes in style. Amendment effective October 1, 2013.

35-2-527. Special meeting.

Compiler's Comments

2013 Amendment: Chapter 190 in (4) inserted last sentence concerning member participation and presence. Amendment effective October 1, 2013.

35-2-528. Court-ordered meeting.

Official Comments

Official Comments: Section 7.03 [this section] would be an addition to the MCA. It is similar to a provision the committee recommended for the RMBCA. Section 7.03 [this section] allows members, persons entitled to participate in meetings, and the attorney general in the case of a public benefit corporation to have a court enforce the provisions of §§ 7.01 and 7.02 [35-2-526 and 35-2-527] requiring annual, regular and special meetings. Section 7.03 [this section] continues the RMNCA policy of providing a legal structure for the enforcement of membership rights.

Compiler's Comments

2007 Amendment: Chapter 240 in (1) near end substituted "in Lewis and Clark County" for "where its registered office is located". Amendment effective October 1, 2008.

35-2-529. Action by written consent.

Official Comments

Official Comments: Section 7.04 [this section] provides smaller corporations with a quick and effective means of approving proposed corporate actions. Action by written consent does not serve as a substitute for a properly demanded special meeting nor can it be used to circumvent the annual meeting requirement of the RMNCA § 7.01.

35-2-530. Notice of meeting.

Official Comments

Official Comments: Section 7.05 [this section] continues the RMNCA policy of providing a legal structure for the enforcement of membership rights. The statute provides corporations with safe harbor provisions for providing notice. These safe harbor provisions may not be consistent with the practices of small nonprofit corporations. Therefore, § 7.05(b) [subsection (2) of this section] provides that other means of giving notice may also be fair and reasonable when all the circumstances are considered. Section 7.05(b) [subsection (2) of this section] does not apply to approval of conflict of interest transactions, indemnifications, amendment of articles and bylaws, approval of mergers, sale of assets and dissolution.

35-2-532. Record date — determining members entitled to notice and vote.

Official Comments

Official Comments: Section 7.07 [this section] would be an addition to the MCA. It adds certainty to the law relating to nonprofit corporations. The RMNCA separates the concept of record date for notice from record date for the right to vote. According to the ABA Official Comments: "These procedures comport with the way most nonprofit corporations operate. Corporations that operate in a different manner may adopt a bylaw or a corporate resolution setting forth a different record date."

35-2-533. Action by written ballot.

Official Comments

Official Comments: Section 7.08 [this section] would be an addition to the MCA. It is necessary because many nonprofit corporations are not able to attain a quorum at meetings.

Compiler's Comments

2013 Amendment: Chapter 190 inserted (2) regarding a member's consent to written ballot or ballot by electronic communication; and made minor changes in style. Amendment effective October 1, 2013.

35-2-535. Members' list for meeting.

Compiler's Comments

2013 Amendment: Chapter 190 in (1) in second sentence inserted "or authenticated electronic identification". Amendment effective October 1, 2013.

2007 Amendment: Chapter 240 in (4) near middle after "principal office" inserted "is located" and after "state" substituted "in Lewis and Clark County" for "where its registered office is located"; and made minor changes in style. Amendment effective October 1, 2008.

35-2-536. Voting entitlement generally.

Official Comments

Official Comments: Section 7.21(b) [subsection (2) of this section] would be an addition to the MCA. According to the ABA Official Comment: "This rule comports with normal expectations when one membership is held by a family and each member of the family is listed as holding part of the membership."

35-2-537. Quorum requirements.

Official Comments

Official Comments: Section 7.22(a) [subsection (1) of this section] in substance is identical to MCA § 35-2-504 [now repealed]. Section 7.22(b), (c) & (d) [subsections (2), (3), and (4) of this section] would be an addition to the MCA. Section 7.22(b) [subsection (2) of this section] allows the members or the board to decrease the quorum for any member action. Decreasing the quorum should not be detrimental to the members as member action still requires approval by a majority of the quorum. Section 7.22(c) [subsection (3) of this section] requires an amendment to increase the quorum for any member action because an increase in quorum may make it difficult for members to act.

35-2-539. Proxies.

Compiler's Comments

2013 Amendment: Chapter 190 in (5)(a) substituted "being present at any meeting and voting" for "attending any meeting and voting in person". Amendment effective October 1, 2013.

35-2-541. Other methods of electing directors.

Official Comments

Official Comments: Section 7.26 [this section] would be an addition to the MCA. The ABA Comments state: "There is no valid reason to limit voting for directors to cumulative or straight voting. The method of electing directors may not be on an ad hoc basis, but must be set forth in or authorized by the articles or bylaws. The board in overseeing an election must comply with the fiduciary standards set forth in § 8.30 [35-2-416] regardless of the manner in which the election is conducted."

35-2-542. Corporation's acceptance of votes.

Official Comments

Official Comments: Section 7.27 [this section] would be an addition to the MCA. Section 7.27 [this section] sets forth the rules under which corporations may accept or reject the signature on a vote, consent, waiver or proxy appointment, as that of a member. Section 7.27 [this section] is designed to provide certainty and protect nonprofit corporations and their officers and agents who act in good faith.

Compiler's Comments

2013 Amendment: Chapter 190 in (1) after "member" inserted "or is the authenticated electronic identification of a member"; in (2) after "member" inserted "or is not the authenticated electronic identification of a member"; in (2)(a), (2)(b), (2)(c)(i), (2)(d)(i), and (2)(d)(ii) after "name signed" inserted "or electronic identification used"; in (2)(c)(ii) after "signing" inserted "or using the electronic identification"; and in (3) substituted "or electronic identification" for "on it". Amendment effective October 1, 2013.

35-2-543. Voting agreements.

Official Comments

Official Comments: Section 7.30 [this section] would be an addition to the MCA. Section 7.30 [this section] is consistent with current statutory and case law in other jurisdictions.

35-2-550. Unincorporated homeowners' association — remote meetings.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Part 6

Merger, Consolidation, and Sale of Assets

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-608. Approval of plan of merger.

Official Comments

Official Comments: Section 11.01(b)(3) and (4) [subsections (2)(c) and (2)(d) of this section] would be additions to the MCA. These provisions require disclosure of the effects of the mergers on memberships in a corporation. This disclosure provides members with a basis for making an informed decision regarding the proposed merger.

Compiler's Comments

1993 Amendment: Chapter 249 near beginning of (1) substituted "one or more nonprofit" for "profit".

35-2-609. Limitations on mergers by public benefit or religious corporations.

Official Comments

Official Comments: Section 11.02 [this section] would be an addition to the MCA. According to the ABA Official Comments: "The provisions of Section 11.02 [this section] are designed to prevent the assets of public benefit or religious corporations from being diverted from their charitable or public purposes as a result of merger."

Compiler's Comments

2007 Amendment: Chapter 240 in (1) near middle after "corporation's" substituted "principal office" for "registered office" and after "located" inserted "or, if the principal office is not located in this state, in Lewis and Clark County". Amendment effective October 1, 2008.

2005 Amendment: Chapter 214 in (1) at beginning inserted exception clause; and inserted (4) providing that a public benefit corporation or religious corporation that is considered a nonprofit health entity is subject to certain statutory provisions. Amendment effective April 8, 2005.

Applicability: Section 24, Ch. 214, L. 2005, provided: "[This act] applies prospectively to and may not be applied or interpreted to have an effect on a conversion transaction or any individual transaction or series of transactions completed before [the effective date of this act], except that a transaction or series of transactions made prior to [the effective date of this act] may be considered in any application for a conversion transaction made after [the effective date of this act]." Effective April 8, 2005.

35-2-611. Articles of merger.

Official Comments

Official Comments: Section 11.04(1), (2), (3) [subsections (1), (2), and (3) of this section] are in substance identical to provisions contained in MCA § 35-2-604 [now repealed]. Section 11.04(4) [subsection (4) of this section] would be an addition to the MCA. This requirement prevents the corporation from eliminating a person's right to approve an amendment by merging with another corporation.

MCA § 35-2-604 [now repealed] provides for the issuance of a certificate of merger or consolidation. Under the RMNCA this is no longer necessary as certificates are not issued under the standardized filing requirements of Section 1.20 [35-2-119].

Administrative Rules

ARM 44.5.114 Corporations — profit and nonprofit fees.

35-2-612. Effect of merger.

Official Comments

Official Comments: Section 11.05 [this section] corresponds to MCA § 35-2-605 [now repealed]. The RMNCA under § 11.20 [this was evidently intended to refer to 11.05, now this section] provides that merger takes effect upon a proper filing instead of upon the issuance of a certificate of merger or consolidation as § 35-2-605 [now repealed] provides. Section 11.05 [this section] is more concise than § 35-2-605 [now repealed] concerning what property and rights the surviving corporation possesses.

35-2-613. Merger with foreign corporation.

Official Comments

Official Comments: Section 11.06 [this section] corresponds to MCA § 35-2-606 [now repealed]. Section 11.06 [this section] is more concise than MCA § 35-2-606 [now repealed].

Compiler's Comments

2015 Amendment: Chapter 280 in (1)(a) after "state" inserted "tribe". Amendment effective April 23, 2015.

2007 Amendment: Chapter 240 in (2) near end after "corporation" substituted "may be served with" for "is considered to have irrevocably appointed the secretary of state as its agent for service of" and at end inserted "as provided in 35-7-113". Amendment effective October 1, 2008.

35-2-614. Bequests, devises, and gifts.

Official Comments

Official Comments: Section 11.07 [this section] would be an addition to the MCA. The provision provides corporations with the authority to properly handle gifts, bequests and grants that take effect or remain payable after a merger. The specific provisions of a will or other instrument will have control over the statute, but a provision requiring that a bequest or gift be used for a specific purpose is not negated by a merger. After merger the gift or bequest can only be used for the specified purposes.

35-2-616. Sale of assets in regular course of activities — mortgage of assets.

Official Comments

Official Comments: Section 12.01 [this section] corresponds to MCA § 35-2-607 [now repealed]. Section 12.01 [this section] requires membership approval only if it is provided for in the articles of incorporation. MCA § 35-2-607 [now repealed] is ambiguous concerning membership approval; approval is required "[I]f there are members entitled to vote . . . ."

35-2-617. Sale of assets other than in regular course of activities.

Official Comments

Official Comments: Section 12.02 [this section] would be an addition to the MCA. If the sale of substantially all of the corporations [sic] assets is not in the regular course of business the RMNCA provides greater protection against the misuse of assets. Membership approval is required if the corporation has members and before the sale a public benefit or a religious corporation must give written notice of the sale to the attorney general.

Compiler's Comments

2005 Amendment: Chapter 214 in (7) at beginning inserted exception clause; inserted (7)(b) providing that a public benefit corporation or religious corporation that is considered a nonprofit health entity is subject to certain statutory provisions; and made minor changes in style. Amendment effective April 8, 2005.

Applicability: Section 24, Ch. 214, L. 2005, provided: "[This act] applies prospectively to and may not be applied or interpreted to have an effect on a conversion transaction or any individual transaction or series of transactions completed before [the effective date of this act], except that a transaction or series of transactions made prior to [the effective date of this act] may be considered in any application for a conversion transaction made after [the effective date of this act]." Effective April 8, 2005.

Part 7
Dissolution and Liquidation

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-720. Dissolution by incorporators or directors and third persons.

Compiler's Comments

2017 Amendment: Chapter 151 inserted (4) requiring compliance with Title 33, chapter 3, part 6. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

35-2-721. Dissolution by directors, members, and third persons.

Compiler's Comments

2017 Amendment: Chapter 151 inserted (7) requiring compliance with Title 33, chapter 3, part 6. Amendment effective October 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

35-2-722. Notices to attorney general.

Official Comments

Official Comments: Section 14.03 [this section] would be an addition to the MCA. The provisions of § 11.02 [35-2-609] are designed to prevent the assets of public benefit or religious corporations from being diverted from their charitable or public purposes through a dissolution. The submission of a list of assets and to whom they were transferred provides a record should there be a question as to the propriety of any transfer. This provision (14.03(c) [subsection (3) of this section]) only applies to public benefit corporations.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

2005 Amendment: Chapter 214 in (1) at beginning of first sentence inserted exception clause; inserted (4) providing that a public benefit corporation or religious corporation that is considered a nonprofit health entity is subject to certain statutory provisions; and made minor changes in style. Amendment effective April 8, 2005.

Applicability: Section 24, Ch. 214, L. 2005, provided: "[This act] applies prospectively to and may not be applied or interpreted to have an effect on a conversion transaction or any individual transaction or series of transactions completed before [the effective date of this act], except that a transaction or series of transactions made prior to [the effective date of this act] may be considered in any application for a conversion transaction made after [the effective date of this act]." Effective April 8, 2005.

35-2-723. Articles of dissolution.

Official Comments

Official Comments: Under the RMNCA unless the articles of dissolution specify a later effective date a corporation is dissolved upon the filing of articles of dissolution. Dissolution is effective under the MCA when the certificate of dissolution is issued. The RMNCA is designed to simplify the dissolution process.

Section 14.04(6) and (7) [subsection (1)(f) and (1)(g) of this section] would be additions to the MCA to provide needed clarity to the law.

35-2-724. Revocation of dissolution.

Official Comments

Official Comments: Section 14.05 [this section] provides that a corporation may revoke its dissolution within 120 days of its effective date. Because of this the RMNCA provides a corporation with more flexibility in revoking its dissolution than the MCA.

The procedures for revocation under § 14.05 [this section] require approval of revocation in the same manner as the authorization for dissolution. This provides consistency in the RMNCA since the manner of authorization for dissolution may vary. Section 14.05 [this section] should be cross referenced to § 4.01(b)(4) [35-2-305(2)(d)], concerning the reservation of the corporate name for the duration of the 120-day revocation period.

35-2-725. Effect of dissolution.

Case Notes

Homeowners' Association Considered Corporation Despite Involuntary Corporate Dissolution — Defect Cured — Motion to Dismiss for Lack of Standing Denied: At the time of trial, a plaintiff homeowners' association had been involuntarily dissolved as a corporation by the Secretary of State for failure to file its annual report. The association cured the defect and was reinstated. The defendant filed a motion to dismiss the association as a party for lack of standing. The Supreme Court held that the District Court correctly denied the motion because under 35-6-202, a reinstated corporation is considered to be a legal entity from the date of its original incorporation. Gibson v. Paramount Homes, LLC, 2011 MT 112, 360 Mont. 421, 253 P.3d 903.

Church Considered Corporation Despite Involuntary Corporate Dissolution at Time of Gift of Property: A church incorporated in 1998. The attorney who filed the incorporation subsequently moved out of state, and because annual reports were not filed, the Secretary of State involuntarily dissolved the church's corporate status in 2000. The church's corporate status was reinstated in 2004. The church was not aware that it was not a valid corporation when it received a gift of property in 2002. Various parties contributed fill to raise the level of the property, but the fill contained asphalt and garbage. The church sued defendants to recover damages incurred in removing the undesirable materials, and defendants filed a third-party complaint against the couple who donated the property. Despite the church's argument that it was a de facto corporation while it was involuntarily dissolved, the District Court granted defendants' motion for summary judgment on grounds that because the church was not a corporation at the time that the property was donated, it could not acquire ownership of the land and thus lacked standing to bring the suit. On appeal, the Supreme Court reversed. In light of the church's reinstated corporate status, under 35-6-202, the church should have been treated as though it were a legal corporation able to accept gifts at the time that the property was donated. Defendants' argument that this section should prohibit the church from accepting the property when it was a dissolved corporation also failed because this section governs the acts of corporations that are in liquidation, while 35-6-202 gives involuntarily dissolved corporations the option for reinstatement and treats a reinstated corporation as an existing legal entity from the date of original incorporation. Valley Victory Church v. Sandon, 2005 MT 72, 326 M 340, 109 P3d 273 (2005).

35-2-727. Unknown claims against dissolved corporations.

Official Comments

Official Comments: The provisions change the existing law as follows:

(1) Section 14.07 [35-2-726] makes it clear that claims may be brought against a corporation, even if they arise after dissolution. Existing law arguably does not provide a remedy for claims against dissolved corporations arising after dissolution. See, e.g., Blankenship v. Demmler, 89 Ill. App. 3d 569, 411 N.E.2d 1153 (1980).

(2) Claims against dissolved corporations must be made within five years under the MCA. Under the above proposal the five-year limitation period is abolished. Instead claims must be made within the normal limitation period.

(3) Subsection (b) [subsection (2) of this section] codifies the common law trust fund doctrine that provides that the property of a corporation is considered a trust fund for the payment of corporate debts. As such, members take assets upon dissolution subject to the claims of creditors. Codifying this doctrine adds certainty to the law.

(4) Subsection (c) [subsection (3) of this section] codifies the holding in North American Asbestos Corp. v. Superior Court, 180 Cal. App. 3d 902, 225 Cal. 877 (1986). The case holds that when the corporate code of a state of incorporation regarding limitation periods for claims against dissolved corporations different from the corporate code in the jurisdiction where the claim arises, the law of the jurisdiction where the claim arises applies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-2-728. Grounds for judicial dissolution.

Official Comments

Official Comments: Section 14.31(a)(1) [this was evidently intended to refer to § 14.30(a)(1), now subsection (1)(a) of this section] would be an addition to the MCA. This subsection continues the RMNCA's policy of protecting the public interest in public benefit corporations. The attorney general is empowered to proceed for judicial dissolution when a public benefit corporation is unfairly or fraudulently failing to carry out its legitimate purposes, or when assets are being diverted for the personal benefit of officers, directors or other individuals.

Section 14.31(a)(2) [this was evidently intended to refer to 14.30(a)(2), now subsection (1)(b) of this section] provides protection for religious corporations as their articles or bylaws may prevent a member or director from petitioning for dissolution. Also under this subsection corporations are protected from harassment by a single member as a proceeding must be commenced by 50 or more members or members holding 5% or more of the voting power. Currently the MCA allows a single member to commence a proceeding.

Section 14.31(b) [this was evidently intended to refer to § 14.30(b), now subsection (2) of this section] provides an important clarification of the law to courts not contained in the MCA. Since dissolution is a remedy of last resort this subsection gives the court authority to consider reasonable alternatives and adopt an appropriate remedy.

35-2-729. Procedure for judicial dissolution.

Compiler's Comments

2007 Amendment: Chapter 240 in (1) in second sentence near end after "office" inserted "is or was last located" and at end substituted "in Lewis and Clark County" for "the county where its registered office is or was last located". Amendment effective October 1, 2008.

35-2-732. Deposit with state treasurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Part 8
Foreign Corporations

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-820. Authority to transact business required.

Official Comments

Official Comments: Section 15.01(b) [subsection (2) of this section] expands the list of activities which do not constitute the transaction of business from the current MCA by adding subsections (4), (5), and (9) [subsections (2)(d), (2)(e), and (2)(i) of this section]. The new exemptions are added primarily because of U.S. Constitutional considerations. The ABA Official Comments state:

"A corporation is not 'transacting business' . . . if it is transacting business in interstate commerce . . . or soliciting or obtaining orders that must be accepted outside the state before they become contracts. . . . These limitations reflect the provisions of the United States Constitution that grant to the United States Congress exclusive power over interstate commerce, and preclude states from imposing restrictions or conditions upon this commerce. These sections should be construed in a manner consistent with judicial decisions under the United States Constitution." Official Comment to Model Business Corporation Act Section 15.01.

Section 15.01(c) [subsection (3) of this section] would be an addition to the MCA. Section 15.01(c) [subsection (3) of this section] states that the list in § 15.01(b) [subsection (2) of this section] is not exhaustive, this clarifies a court's discretion in determining whether other conduct constitutes the transaction of business. The committee opted to adopt the RMNCA, but revise § 15.01(b)(9) [subsection (2)(i) of this section] as the RMBCA has been revised by the committee. Section 15.01 [this section] is consistent with provisions in the RMBCA.

35-2-821. Consequences of transacting business without authority.

Case Notes

Argument Based on Different Subsection of Statute on Appeal Than Subsection Relied Upon at Trial Rejected: Unified Industries based certain arguments to the District Court on subsection (1) of this section. On appeal, it argued that the District Court's decision that it was transacting business illegally was incorrect under subsection (5) of this section. The Supreme Court held that the argument that subsection (5) validated Unified Industries' transaction of business in the state was totally distinct from the argument that it made under subsection (1) to the District Court and therefore could not be raised for the first time on appeal. Unified Indus., Inc. v. Easley, 1998 MT 145, 289 M 255, 961 P2d 100, 55 St. Rep. 574 (1998).

Party's Pleading as Admission of Transacting Business in Montana: Unified Industries sued Easley and others for an easement across their property. The defendants claimed that Unified Industries had not established a right to an easement because it was not licensed to transact business in the state during the time it claimed that its right to an easement arose. On appeal, Unified Industries argued that it was exempt from the requirement to obtain a certificate of authority. The Supreme Court held that Unified Industries' obtainment of a certificate of authority in order to bring an action against the defendant's and its statement in District Court that it had the right to sue after obtaining the certificate were implicit concessions that it was transacting business in the state and therefore it could not on appeal argue that it was exempt from state registration requirements. Unified Indus., Inc. v. Easley, 1998 MT 145, 289 M 255, 961 P2d 100, 55 St. Rep. 574 (1998).

35-2-822. Application for certificate of authority.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 42 deleted former (2) that read: "(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated"; inserted (10) regarding foreign corporation's statement of compliance; and made minor changes in style. Amendment effective February 18, 2015.

Chapter 280 in (2) and former (2) (deleted by Ch. 42) after "state" inserted "tribe". Amendment effective April 23, 2015.

2011 Amendment: Chapter 26 in (1)(d) substituted "business mailing address" for "street address and, if different, the mailing address"; and in (1)(f) substituted "business mailing addresses" for "usual business or home addresses". Amendment effective October 1, 2011.

2007 Amendment: Chapter 240 substituted (1)(e) concerning information required by 35-7-105(1) for former text that read: "the street address and, if different, the mailing address of its registered office in this state and the name of its registered agent at that office". Amendment effective October 1, 2008.

Administrative Rules

ARM 44.5.114 Corporations — profit and nonprofit fees.

ARM 44.5.202 Certificate of existence for foreign entities.

35-2-823. Amended certificate of authority.

Compiler's Comments

2015 Amendment: Chapter 280 in (1)(d) inserted "tribe". Amendment effective April 23, 2015.

2007 Amendment: Chapter 240 inserted (1)(c) concerning information required by 35-7-105(1); and made minor changes in style. Amendment effective October 1, 2008.

35-2-826. Corporate name of foreign corporation.

Compiler's Comments

2019 Amendment: Chapter 271 in (2)(b) substituted "registered under 35-2-306, 35-2-307, 35-14-402, or 35-14-403" for "registered under 35-1-309, 35-1-311, 35-2-306, or 35-2-307". Amendment effective June 1, 2020.

1993 Amendment: Chapter 120 in (2)(e) inserted reference to limited liability company name.

Coordination Instruction: Section 176, Ch. 411, L. 1991, provided: "If House Bill No. 552 is passed and approved and if it includes a section that repeals sections 35-1-302 and 35-1-303, then [section 152(2)(b) of this act] [35-2-826(2)(b)] is amended to read: "(b) a corporate name reserved or registered under [section 32 or 33] of [sections 1 through 168] or [section 26 or 27 of House Bill No. 552]."" House Bill No. 552 was approved April 6, 1991, as Ch. 368, L. 1991, and included the repeal of 35-1-302 and 35-1-303. The Code Commissioner has therefore changed the text of 35-2-826 in compliance with the coordination instruction.

35-2-831. Withdrawal of foreign corporation.

Compiler's Comments

2015 Amendment: Chapter 280 in (2)(a) inserted "tribe". Amendment effective April 23, 2015.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

35-2-832. Grounds for revocation.

Official Comments

Official Comments: Section 15.30(b) [subsection (2) of this section] gives the attorney general power to proceed for revocation if the foreign corporation would be considered a public benefit corporation if incorporated in this state. This provision continues the RMNCA's policy of safeguarding the public interest when the activities of public benefit corporations are in question.

Compiler's Comments

2015 Amendment: Chapter 280 in (1)(f) near middle after "in the state" inserted "tribe". Amendment effective April 23, 2015.

2007 Amendment: Chapter 240 in (1)(c) after "agent" deleted "or registered office"; in (1)(d) near beginning after "state" substituted "by an appropriate filing" for "under 35-2-828 or 35-2-829", after "agent" deleted "or registered office", after "changed" deleted "that its registered agent has", after "resigned" deleted "or that its registered office has been discontinued", and at end deleted "or discontinuance"; and made minor changes in style. Amendment effective October 1, 2008.

35-2-833. Procedure for and effect of revocation.

Compiler's Comments

2017 Amendment: Chapter 23 in (1) substituted "deliver" for "mail"; and in (3) in first sentence in middle substituted "delivering" for "mailing" and in last sentence substituted "deliver" for "mail". Amendment effective October 1, 2017.

1993 Amendment: Chapter 249 in (1) and in two places in (3) substituted requirement that Secretary of State mail written notice of the determination for former requirement that the determination be served on the foreign corporation pursuant to 35-2-830.

Part 9
Annual Report — Corporate Records

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-904. Annual report for secretary of state.

Official Comments

Official Comments: The Committee deleted a requirement from the RMNCA that corporations designate in their annual report whether they are public benefit, mutual benefit or religious corporations. Such designation is accomplished only by a statement in the corporation's articles. To allow designation by a simple statement in an annual report does not provide the safeguards that an amendment to articles of incorporation does.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(c) before "address" inserted "business mailing"; and in (1)(d) substituted "business mailing addresses" for "business or residence addresses". Amendment effective October 1, 2011.

2007 Amendment: Chapter 240 in (1)(a) substituted "jurisdiction" for "state or country"; substituted (1)(b) concerning information required by 35-7-105(1) for former text that read: "the address of its registered office and the name of its registered agent at the office in this state"; and in (1)(c) at end inserted "wherever located". Amendment effective October 1, 2008.

Administrative Rules

ARM 44.5.301 Requirements for annual report online filing.
ARM 44.5.302 Form of annual report.

35-2-906. Corporate records.

Official Comments

Official Comments: The ABA Official Comments state: "The underlying rationale of § 16.01(a) [subsection (1) of this section] is that there should be a permanent record of actions taken by the members, the board and committees of the board acting in place of the board. The section does not require that the minutes or record of an action include a discussion of or reasons for an action.

Section 16.01(b) [subsection (2) of this section] requires a corporation to maintain appropriate accounting records. The required records are the current accounting records. The statute does not require that the records be kept permanently nor does it address how long accounting records should be kept. The ABA Official Comments state: "The question of what accounting records are 'appropriate' depends on the nature, size and other characteristics of the corporation. Numerous nonprofit corporations have a relatively small amount of money and operate with volunteer staffs. In such cases, 'appropriate accounting records' may be composed of checkbooks, canceled checks and receipts. In the case of entities with significant funds, more detailed accounting records are appropriate."

Compiler's Comments

1993 Amendment: Chapter 10 in (5)(e) substituted reference to members for reference to shareholders.

35-2-907. Inspection of records by members.

Official Comments

Official Comments: The provisions of § 16.02 [this section] provide a member with automatic access to certain records after the member gives the corporation five days notice. A demand to copy and inspect records must be made in good faith and for a proper purpose if the access is not automatic under the statute.

The articles or bylaws of a religious corporation may limit or abolish the rights of a member to inspect and copy any corporate record.

35-2-909. Court-ordered inspection.

Official Comments

Official Comments: Section 16.04 [this section] would be an addition to the MCA. Section 16.04 [this section] allows a successful member to be awarded reasonable counsel fees.

Compiler's Comments

2007 Amendment: Chapter 240 in (1) near middle after "office" inserted "is located" and after "state" substituted "in Lewis and Clark County" for "its registered office, is located"; in (2) near middle after "office" inserted "is located" and after "state" substituted "in Lewis and Clark County" for "the county where its registered office is located"; and made minor changes in style. Amendment effective October 1, 2008.

35-2-910. Limitations on use of membership list.

Official Comments

Official Comments: Section 16.05 [this section] would be an addition to the MCA. A membership list may not be obtained or used for any purpose unrelated to a member's interest as member without the board's consent.

35-2-911. Financial statements for members.

Compiler's Comments

2013 Amendment: Chapter 190 substituted "deliver" for "mail". Amendment effective October 1, 2013.

35-2-912. Report of indemnification to members.

Official Comments

Official Comments: Section 16.21 [this section] would be an addition to the current MCA.

Part 10

Fees and Charges

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-1003. Fees for filing, copying, and services.

Compiler's Comments

2001 Amendment: Chapter 396 substituted (2) requiring that fees must be set and deposited in accordance with 2-15-405 for former (3) that read: "(3) The fees presented under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section"; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules

ARM 44.5.114 Corporations — profit and nonprofit fees.
ARM 44.5.121 Miscellaneous fees.

Part 11

Secretary of State

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-1108. Forms.

Official Comments

Official Comments: Section 1.21 [this section] corresponds to MCA § 35-2-1102 and § 35-2-1104 [both repealed]. This language, while derived from the RMNCA, contains two deviations:

(a) The section makes it clear that the forms should be promulgated by administrative rule.

(b) This section allows the secretary of state to prescribe computer formats for forms, when desirable.

35-2-1109. Filing duty of secretary of state.

Official Comments

Official Comments: Section 1.25 [this section] provides the filing duty of the secretary of state, instead of enumerating the duty in different parts as the MCA does.

Section 1.25(b) [subsection (2) of this section] eliminates the necessity of the issuance of documents such as a certificate of incorporation. The ABA Official Comments state:

Section 1.25(b) [subsection (2) of this section] provides that acceptance of articles of incorporation or other documents is evidenced merely by the issuance of a fee receipt or acknowledgment of receipt if no fee is required. Earlier versions of the Model Act and the statutes of many states provided that acceptance by the secretary of state is evidenced by a 'certificate' (e.g., of incorporation, of merger, or of amendment). This older practice was not retained in the revised Model Act because it was felt desirable to reduce the number of pieces of paper issued by the secretary of state. Under the older practice most state offices routinely issued both fee receipts and certificates. A single document — the fee receipt or acknowledgment — should sufficiently indicate that the document has been accepted for filing, and in fact many states in recent years have dispensed with the formal certificate.

Section 1.25(d) [subsection (4) of this section] would be an addition to the MCA. The ABA Official Comments state:

Under section 1.25 [this section] the secretary of state is required to file a document if it 'satisfies the requirements of section 1.20 [35-2-119].' This language should be contrasted with earlier versions of the Model Act (and many state statutes) that required the secretary of state to ascertain whether the document 'conformed with law' before filing it. The purpose of this change is to limit the discretion of the secretary of state to a ministerial role in reviewing the contents of documents. If the document submitted is in the form prescribed and contains the information required by section 1.20 [35-2-119] and the applicable provision of the Model Act, the secretary of state under section 1.25 [this section] must file it even though it contains additional provisions the secretary of state may feel are irrelevant or not authorized by the Model Act or by general legal principles. Consistently with this approach, section 1.25(d) [subsection (4) of this section] states that the filing duty of the secretary of state is ministerial and provides that filing a document with the secretary of state does not affect the validity or invalidity of any provision contained in the document and does not create any presumption with respect to any provision. Persons adversely affected by provisions in a document may test their validity in a proceeding appropriate for that purpose.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 33 in (3) near middle after "10" inserted "business"; inserted (5) allowing the secretary of state to correct errors caused by a filing officer; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 240 in (2) in second sentence near beginning in exception clause deleted reference to 35-2-314; and made minor changes in style. Amendment effective October 1, 2008.

2005 Amendment: Chapter 71 in (2) in first sentence near middle after "secretary of state's" deleted "name" and at end substituted "the secretary of state received the document" for "of receipt, on the original, the copy of the document, and the receipt for the filing fee" and in second sentence near middle substituted "a certification letter" for "the document copy" and at end after "representative" substituted "as acknowledgment that the document has been filed and the fee has been paid" for "together with the filing fee receipt or acknowledgment of receipt if no fee is required"; and made minor changes in style. Amendment effective October 1, 2005.

35-2-1112. Certificate of existence.

Official Comments

Official Comment: Section 1.28 [this section] would be an addition to the MCA. The current MCA does not contain a statutory provision defining a certificate of existence. A certificate of existence is essentially a certificate of good standing.

Part 13
Derivative Actions

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-1301. Standing.

Official Comments

Official Comments to §§ 35-2-1301 Through 35-2-1307: There has long been confusion as to whether members of a nonprofit corporation may sue derivately [sic] to enforce the rights of the corporation. See H. OLECK, NONPROFIT CORPORATIONS, ORGANIZATIONS, AND ASSOCIATIONS (4th ed. 1980). One court, for example, has gone so far as to find that the mere fact that one contributes to a nonprofit corporation gives the person the right to initiate a derivative action. Atwell v. Bide-a-Wee Home Association, 59 Misc. 2d, 321, 299 N.Y.S.2d 40 (Sup. Ct. 1969).

The drafters of the RMNCA suggests that this dispute be clarified with legislation. While the committee agrees, the committee did not opt for the RMNCA suggestions. The RMNCA suggestions seem to leave open difficult questions as to when prior demand must be made on the board of directors by the complainant and when an independent board could dismiss the action. In order to more adequately balance the rights of corporations to be free of harassing litigation, with the needs of members to require the corporation to act to achieve the charitable purpose, the committee's suggestions track ABA's suggestion for "for profit" corporations. The ABA's Comments concerning derivative suits can be found at 45 BUS. LAW. 1241 (May 1990).

Finally, as noted by the ABA, federal or state constitutional provisions may prohibit courts from considering derivative suits brought on behalf of religious corporations.

35-2-1306. Payment of expenses.

Case Notes

No Prevailing Party — No Err to Not Award Attorney Fees: The plaintiffs, members of a property owners' association, filed a lawsuit to restrain the directors of the association from taking actions that the plaintiffs believed exceeded their authority. The defendants filed several counterclaims against the plaintiffs, including civil conspiracy, and sought attorney fees. Five years of litigation ensued. Eventually, the District Court granted summary judgment against all of the parties on all of their claims and denied the defendants attorney fees. The defendants appealed, arguing that the District Court had erred in granting the plaintiffs summary judgment on their counterclaims and that they should have been granted fees because of the plaintiffs' claims. The Supreme Court affirmed, finding that the defendants did not prove all of the elements required to prove a civil conspiracy chiefly because they did not prove they had suffered damages as a result of the plaintiffs' actions. Also, the Supreme Court agreed neither party was the prevailing party in the matter and, therefore, no party was entitled to discretionary attorney fees under 35-2-1306. Sullivan v. Cherewick, 2017 MT 38, 386 Mont. 350, 391 P.3d 62.

Part 14
Distributions

Part Compiler's Comments

Effective Date: Section 182, Ch. 411, L. 1991, provided: "[This act] is effective January 1, 1992."

35-2-1401. Prohibited distributions — permitted transactions.

Compiler's Comments

2007 Amendment: Chapter 135 inserted (2) regarding compensation and reimbursement of members, directors, or others and conferring of benefits upon or making contributions to members by public benefit corporation; and made minor changes in style. Amendment effective October 1, 2007.

CHAPTER 3
RELIGIOUS CORPORATIONS SOLE

Part 2
Formation and Operation

35-3-202. Articles of incorporation.

Compiler's Comments

2007 Amendment: Chapter 240 in (1)(g) near beginning substituted "principal office" for "initial registered office" and at end substituted "information specified by 35-7-105(1)" for "name of its initial registered agent at such address"; and made minor changes in style. Amendment effective October 1, 2008.

35-3-205. Powers of corporation sole.

Compiler's Comments

2015 Amendment: Chapter 280 in (7) near end after "territory" inserted "tribe". Amendment effective April 23, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-3-206. Amendment of articles of incorporation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-3-207. Succession.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-3-209. Annual report.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(b) before "address" inserted "business mailing"; and in (1)(c) substituted "business mailing addresses" for "respective addresses". Amendment effective October 1, 2011.

2007 Amendment: Chapter 240 in (1)(b) near beginning substituted "principal office" for "registered office", after "corporation" substituted "wherever located" for "in Montana", and at end substituted "information specified by 35-7-105(1)" for "name of its registered agent in Montana at that address"; and made minor changes in style. Amendment effective October 1, 2008.

1989 Amendment: In introductory clause of (1) inserted "on forms or in a computerized format prescribed by the secretary of state"; in (1)(b), in two places, substituted "Montana" for "in this state"; and made minor changes in style.

35-3-210. Registered agent — corporate office.

Compiler's Comments

2007 Amendment: Chapter 240 at end inserted "as provided in 35-7-105(1)"; deleted former (2) that read: "(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment"; and made minor changes in style. Amendment effective October 1, 2008.

Effective Date: Section 25, Ch. 229, L. 1999, provided that this section is effective on passage and approval. Approved April 2, 1999.

CHAPTER 4
MONTANA PROFESSIONAL CORPORATION ACT

Chapter Official Comments

The "Official Comments" to the sections of this chapter were written by the American Bar Association, which drafted the model act that is the source for this chapter.

Chapter Compiler's Comments

Advertising Guidelines: On June 24, 1980, the Supreme Court of Montana issued Order No. 12500 revising the Canons of Professional Ethics to reflect the findings in Bates and O'Steen v. State Bar of Arizona, 443 US 350, 97 S Ct 2691 (1977), allowing attorneys to advertise.

Chapter Case Notes

Determination of Nature of Association for Federal Income Tax Purposes: Although under state law at the time of the decision, a corporation could not be organized to practice medicine, yet an association that had the criteria of a corporation could be considered a corporation for federal tax purposes. The determination of the nature of associations for federal tax purposes is not by the state criteria but rather by the special criteria sanctioned by the tax law, the regulations, and the courts. U.S. v. Kintner, 216 F2d 418 (9th Cir. 1954).

Corporation Not Authorized to Practice Law: Nothing contained in section 15-104, R.C.M 1947 (now repealed), authorized a corporation to practice law. State ex rel. Freebourn v. Merchants' Credit Serv., Inc., 104 M 76, 66 P2d 337 (1937), overruled on another point in Rae v. Cameron, 112 M 159, 114 P2d 1060 (1943).

Part 1
General

35-4-108. Short title.

Official Comments

This model professional corporation act is designed as a supplement to the Model Business Corporation Act. Section 27 [35-4-111] provides that the state's business corporation act shall apply to professional corporations except to the extent its provisions are inconsistent with the supplemental act. Accordingly, the supplement must be read in conjunction with the Model Business Corporation Act which it closely parallels in structure and semantics. With appropriate modifications, however, this model act may readily be adapted for use as a supplement to other business corporation acts.

Compiler's Comments

Source: Section 35-4-108 is based on Section 1 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-109. Definitions.

Official Comments

Paragraph (1) [(5) in Montana]. The definition of "professional service" limits and describes the purposes for which corporations may be organized under Section 3 [35-4-205].

As a general proposition, corporations may not be formed under business corporation acts for the purpose of practicing a profession. In the absence of any statutory definition of the word "profession," the courts have held that, although a licensing requirement is characteristic of the professions, all licensed services are not necessarily professional services which may not be rendered by corporations. Accordingly, the determination as to whether particular licensed services may be rendered by corporations has been made on a case by case basis based upon construction of the state business corporation law or the applicable licensing law.

Some of the existing state statutes under which professional persons are permitted to incorporate cover all licensed services. Statutes of this type are not restricted to persons who are prohibited from incorporating under the business corporation law. Other existing state statutes limit those who may incorporate to specific professions described in a single statute or in a series of similar statutes each applicable to one profession. The definition of "professional service" in paragraph (1) [(5) in Montana] has the effect of restricting the use of the act to the practice of the professions. Rather than listing designated professions, however, the model act follows the precedent set by many existing state statutes of defining professional services as those licensed services which may not be rendered by a corporation organized under the business corporation law.

Paragraph (2) [(3) in Montana]. See Section 26 [35-4-208] with respect to jurisdiction of the licensing authority over professional corporations.

Paragraphs (5) [(6) in Montana] and (6) [not adopted in Montana]. See comment following Section 9 [35-4-301].

Compiler's Comments

2015 Amendment: Chapter 280 in (2) at end inserted "including the laws of a federally recognized Indian tribe". Amendment effective April 23, 2015.

Source: Section 35-4-109 is based on Section 2 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-110. Application to existing corporations.

Official Comments

While most states have adopted a single general professional corporation law applicable to all covered professions, several states have adopted a series of professional corporation laws applicable to individual professions. Section 28 [35-4-110] of the model act sets forth procedures with respect to existing corporations which include mandatory provisions applicable to corporations incorporated under a repealed act and also provisions for voluntary compliance with this act by corporations organized under acts which may not be repealed.

Compiler's Comments

Source: Section 35-4-110 is based on Section 28 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-111. Application of the Montana Business Corporation Act.

Compiler's Comments

Source: Section 35-4-111 is based on Section 27 of the Professional Corporation Supplement to the Model Business Corporation Act.

Part 2
Organization and Regulation

35-4-205. Purposes of corporation.

Official Comments

Apparently most state legislatures have felt that it was necessary to limit the purposes of a professional corporation to the practice of a single profession, and subsection (a) [combined with (b) in Montana] follows the large majority of existing state statutes in this respect. However, the ethical proscriptions of the various professions are not uniform in restricting the activities of a professional group to a single professional field. Some professional groups such as engineers and architects are permitted to carry on joint practice, and in other fields, such as the field of medicine and allied health professions, the extent to which professional practices may be combined is an evolving subject. Accordingly, subsection (b) [combined with (a) in Montana] shifts the responsibility for determining the extent to which two or more professions may combine and the extent to which a professional corporation may engage in business activities to the licensing statutes and regulations governing each profession where variations in public policy and ethical requirements of the various professions may be properly treated.

Compiler's Comments

Source: Section 35-4-205 is based on Section 3 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-206. Corporate name.

Official Comments

Existing state statutes vary in the selection of terms required in the corporate name as corporate designators. To encourage uniformity and avoid confusion the model act approves and requires only the term "professional corporation" or its abbreviation. The Model Business Corporation Act corporate name provision is further modified in paragraph (3)(i) [(3)(a)] to permit similarity of names if the similarity results from the use of personal names of persons associated with the organization. Paragraph (4) authorizes the licensing authority to impose by rule additional requirements appropriate to a particular profession.

Compiler's Comments

2015 Amendment: Chapter 166 in (1) at beginning deleted "except as provided in subsection (1)(b)"; in (3) at beginning substituted "must be distinguishable on the record from" for "may not be the same as or deceptively similar to"; in (3)(b)(i) substituted "a name that is not distinguishable on the record" for "the same or a deceptively similar name and one or more words are added to make the name distinguishable"; and made minor changes in style. Amendment effective April 1, 2015.

2001 Amendment: Chapter 27 inserted (1)(a)(ii) disallowing the use of words in a corporate name other than professional corporation to indicate type of business; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendments: Chapter 120 in (3) inserted reference to limited liability company name.

Chapter 249 at beginning of (1)(a) inserted exception clause; inserted (1)(b) allowing the name of a foreign corporation to contain the words "professional services" or "P.S."; and made minor changes in style.

Source: Section 35-4-206 is based on Section 8 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-207. Directors and officers.

Official Comments

Section 14 [35-4-207] requires that no less than one-half the directors and the officers other than the secretary and treasurer of a professional corporation be licensed professionals. The professional corporation statute[s] of many states require that all directors be licensed while others require less than all. Most existing statutes also prohibit unlicensed persons from serving as officers with variations as to whether all or only certain designated offices are subject to the requirement.

Compiler's Comments

Source: Section 35-4-207 is based on Section 14 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-208. Filing of articles with licensing authority.

Official Comments

Section 26 [35-4-208] requires that a professional corporation register with the appropriate licensing authority by filing a copy of its articles of incorporation with the licensing authority and authorizes the licensing authority to promulgate rules pursuant to the act. Similar provisions appear in a number of existing statutes, and the further statement reaffirming the authority of the licensing authority with respect to licensed professionals is common to many statutes.

Compiler's Comments

Source: Section 35-4-208 is based on Section 26 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-209. Annual reports and statements.

Official Comments

The Model Business Corporation Act requirements for filing an annual report with the Secretary of State are modified to include a statement showing compliance with the requirement of Section 19 [35-4-411] as to qualification of shareholders, directors and officers and to provide that financial information shall be confidential.

Compiler's Comments

Source: Section 35-4-209 is based on Section 22 of the Professional Corporation Supplement to the Model Business Corporation Act.

Part 3

Shares and Shareholders

35-4-301. Issuance and transfer of shares.

Official Comments

The model act departs from existing state statutes in permitting shares of a professional corporation to be issued to persons licensed outside the state of incorporation and to partnerships and other professional corporations authorized to render a professional service permitted by the articles of incorporation of the corporation.

Pennsylvania also permits a professional corporation to issue shares to persons licensed in another state, but existing statutes generally restrict shareholders to natural persons. If shareholders are not liable for debts of the corporation, however, there is no policy reason to prohibit the issuance of shares to another corporation which is subject to the same professional corporation requirements, and under Section 9 [35-4-301] of the model act professional corporations may be given the same flexibility in planning the corporate structure as business corporations. If shareholders are personally liable for the performance of professional services rendered on behalf of the corporation, however, as they may be under either alternate 2 or 3 of Section 11(d) [35-4-404(3) (Montana has alternate 1)], then the holding company device may be used to avoid personal liability, and accordingly, paragraph (3) of subsection (a) [35-4-301(1)(c)] should be deleted if alternate 2 or 3 of Section 11(d) [35-4-404(3) (Montana has alternate 1)] is adopted.

Section 9 [35-4-301] of the model act is applicable to all classes of shares issued by a professional corporation. No qualifications are imposed by the model act (or by existing state statutes) on holders of debt securities. It is unlikely that convertible debt will be issued by a professional corporation, since the corporation will not have the power to issue its shares upon conversion if the holder is not a qualified person at the time the shares are to be issued.

Compiler's Comments

2013 Amendment: Chapter 99 in (1) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2013.

Source: Section 35-4-301 is based on Section 9 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-302. Corporation's right to acquire its own shares.

Official Comments

Nearly all professional corporation statutes require that shareholders be licensed professional persons, and to implement this requirement most statutes require that the corporation repurchase shares which have become the property of unlicensed persons through operation of law. The usual business corporation law restriction against impairment of capital by purchase of the corporation's own shares may conflict with this statutory requirement for the purchase of shares of a professional corporation. Section 7 [35-4-302] of the model act resolves the conflict by removing the Model Business Corporation Act limitation on purchase of shares to the extent of available earned surplus or capital surplus while retaining the insolvency test of Section 6 [35-4-403] of the Model Business Corporation Act. Section 10(a) [35-4-311(1)] of the professional corporation supplement requires the corporation to repurchase shares "to the extent of funds which may be legally made available for such purchase." Thus the requirement of Section 10 [35-4-311] that the professional corporation repurchase the shares of a disqualified person will be subject to the insolvency restriction against repurchase but will not be subject to the capital and surplus restriction.

Compiler's Comments

Source: Section 35-4-302 is based on Section 7 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-303. Proxies and voting trusts.

Official Comments

Section 13 [35-4-303] of the model act requires that the holder of a proxy and the parties to a voting trust agreement be qualified to own shares in the corporation. If shareholders may be personally liable for the performance of professional services rendered on behalf of the corporation, voting trusts should be prohibited to prevent their use to avoid personal liability. See comment following Section 9 [35-4-301]. With regard to other types of agreements regarding voting of shares, Section 34 [35-1-402 (now repealed)] of the Model Business Corporation Act providing that agreements among shareholders regarding voting shall be valid and enforceable is unchanged by the professional corporation supplement.

Pursuant to Section 33 [35-1-401 (now repealed)] of the Model Business Corporation Act the shares of a professional corporation held by an administrator, executor, guardian or conservator may be voted without a transfer of such shares, and shares held by a receiver may be voted by the receiver without transfer if such authority is contained in the order of a court by which the receiver was appointed. Upon the death or insolvency of a major shareholder, it may be necessary to dissolve the corporation or amend its articles by changing its purposes to those of a business corporation. The interest of the shareholder's estate will be protected by permitting the holder of his shares to vote on such proposals. In view of the requirement of Section 14 [35-4-207] that one-half the directors and the principal officers of a corporation be qualified shareholders, there is no significant risk that an unqualified person may exercise control over the professional practice of the corporation during the period that shares of the corporation may be owned by the estate or receiver of a shareholder under Section 10 [35-4-311]. Accordingly, the model act does not modify the provisions of the Model Business Corporation Act regarding voting by administrators and receivers.

Compiler's Comments

Source: Section 35-4-303 is based on Section 13 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-311. Death or disqualification of a shareholder.

Official Comments

Existing state statutes generally require that the shares of a deceased or disqualified shareholder be transferred to a qualified shareholder or purchased by the corporation within a specified period of time following the shareholder's death or disqualification. The model act requires payment of fair value for such shares if the corporation does not establish an alternative method, and the procedure for determining fair value set forth in subsections (b) through (f) [(2) through (6)] parallels the procedure set forth in Section 81 [35-1-907 (now repealed)] of the Model Business Corporation Act with respect to the determination of rights of dissenting shareholders. Shares of a deceased or disqualified shareholder that have not been transferred or purchased within the time limits specified in subsection (g) [(7)] are cancelled, and the shareholder's interest becomes a creditor's claim under this section.

One of the troublesome aspects of the requirement that a shareholder of a professional corporation be licensed to practice the profession is the disposition of the corporation entity of a deceased sole practitioner. Under Section 33 [35-1-401 (now repealed)] of the Model Business Corporation Act the executor of the estate of a sole practitioner may vote the decedent's shares in his professional corporation. See comment following Section 13 [35-4-303]. Accordingly, if the shares of a deceased shareholder are not transferred, the executor may vote the shares to dissolve the corporation or to amend the articles of incorporation to change its purposes to those of a business corporation. If the executor elects to dissolve, a licensed member of the profession must act as director and president during the winding up of the corporation's affairs. If the executor elects to amend the articles, he may do so himself by signing and filing articles of amendment pursuant to Section 15 [35-4-312].

See comment following Section 7 [35-4-302] concerning the effect of statutory restrictions against purchases by a corporation of its own shares resulting in impairment of capital or insolvency. To further reduce the possibility of conflict between the insolvency restriction of Section 7 [35-4-302] and the requirement for purchase of shares under Section 10 [35-4-311] in the event of a judicial determination of fair value, the court is expressly authorized in subsection (d) [(4)] to order that the judgment be paid in installments.

Compiler's Comments

2007 Amendment: Chapter 240 in (4) in first sentence near middle after "where the" substituted "principal office" for "registered office" and after "located" inserted "or, if the principal office is not located in this state, in Lewis and Clark County"; and made minor changes in style. Amendment effective October 1, 2008.

Source: Section 35-4-311 is based on Section 10 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate.

Official Comments

Section 15 [35-4-312] enables the professional corporation of the sole practitioner to continue in existence following the death of its shareholder and simplifies the procedure for amendment of articles set forth in the Model Business Corporation Act. Without some modification of the Model Business Corporation Act procedure, the executor of the deceased shareholder's estate would be required to find another member of the profession to serve as director and president for the purpose of adopting and filing articles of amendment.

Compiler's Comments

Source: Section 35-4-312 is based on Section 15 of the Professional Corporation Supplement to the Model Business Corporation Act.

Part 4
Operation

35-4-401. General powers.

Official Comments

Under existing statutes professional corporations generally have all the powers of business corporations. The model act restricts only the power to participate in partnerships and similar enterprises engaged in activities not permitted to the professional corporation. Investment in limited partnerships as a limited partner would not be prohibited by the model act.

Compiler's Comments

Source: Section 35-4-401 is based on Section 5 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-402. Prohibited activities.

Official Comments

Although not normally found in a business corporation law, an express statutory prohibition against ultra vires acts is fairly common in the existing state professional corporation laws. This prohibition provides a basis on which the licensing authority may initiate enforcement action pursuant to Section 18 [35-4-503] to prevent a professional corporation from engaging in prohibited activities.

Compiler's Comments

Source: Section 35-4-402 is based on Section 4 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-403. Rendering services.

Official Comments

A statement similar to the first clause of Section 6 [35-4-403] to make it clear that unlicensed employees of professional corporations are not authorized to render professional services is included in the statutes of all states. The second clause which is also common in existing statutes is intended to insure that the use of para-professionals and other assistants customarily employed by professionals will not be inhibited by the first clause and also to recognize that a licensed employee of a professional corporation may render services in his individual capacity rather than as an employee of the corporation depending upon the circumstances of his employment. For example, an employee of a professional corporation may render professional services in his individual capacity in states in which the professional corporation may not be admitted as a foreign corporation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 35-4-403 is based on Section 6 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-404. Responsibility for services.

Official Comments

Although all existing state statutes include some provision concerning professional liability or professional responsibility, most statutes are silent as to the vicarious liability of shareholders leaving this question to be determined by the business corporation law. Several statutes clearly provide that shareholder liability is limited as in a business corporation. A few expressly state that shareholders shall be jointly and severally liable for debts of the corporation. And a few, either by statute or rule of practice, condition limited liability for some professions on maintenance of professional liability insurance. A majority of the statutes contain simply a provision to the effect that the statute does not modify any law applicable to the relationship between a person furnishing professional services and a person receiving such services including liability arising out of such professional services. Although one commentator has suggested that this statutory provision preserves the mutual agency and unlimited liability of partnerships, Federal district courts in Ohio and Florida have held, in the context of cases involving the status of a professional corporation for Federal income tax purposes, that shareholders have limited liability under statutes of this type. Accordingly, it seems that shareholders of professional corporations have limited liability under existing statutes in most states.

Section 11 [35-4-404] of the model act states affirmatively the rules for liability of the professional corporation, its employees, and its shareholders resulting from negligence in the performance of professional services. Consistent with the common law doctrine of respondeat superior, subsection (b) [(1)] limits liability of a professional employee to his personal negligence, and subsection (c) [(2)] imposes liability on the corporation for conduct of professional employees within the scope of their employment or of their apparent authority.

Three alternative provisions as to liability of shareholders are proposed in subsection (d) [(3)]: limited liability as in a business corporation, vicarious personal liability as in a partnership, and personal liability limited in amount conditioned upon financial responsibility in the form of insurance or a surety bond. Alternate 3 [Montana has alternate 1] would permit the licensing authority for each profession to establish the minimum amount of security required as a condition for limiting liability of shareholders and to impose requirements as to the coverage provided by the policy or bond representing the security. The minimum amount of security designated in alternate 3 [Montana has alternate 1] would apply to any profession only if no minimum has been fixed by the licensing authority for the profession, but no attempt is made in the model act to specify minimum coverage requirements. Each alternate recognizes by the introductory phrase, "Except as otherwise provided by statute," that more specific rules as to shareholder liability may be enacted with respect to a particular profession or professions, but the formulation of statutory requirements as to either the minimum amount of security or coverage for particular professions is beyond the scope of this model act.

Limited liability of shareholders has historically been considered by the courts and by the Internal Revenue Service as one of several characteristics that distinguish the corporation from the partnership. It should be noted, therefore, that the choice of alternates in subsection (d) [(3)] may affect the tax status of professional corporations formed pursuant to the act.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 35-4-404 is based on Section 11 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-405. Relationship to clients or patients — privileged communications.

Official Comments

Many existing state statutes contain provisions similar to Section 12 [35-4-405] which makes it clear that any relationship of confidence that exists between a professional person and his client or patient is preserved and extends to the professional corporation and also that any privilege applicable to communications with a professional person is preserved and extends to the professional corporation.

Compiler's Comments

Source: Section 35-4-405 is based on Section 12 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-411. Admission of foreign professional corporations — application — revocation.

Official Comments

Many small as well as large professional practices are conducted in more than one state by individuals licensed to practice in more than one state or by partnerships whose members are licensed to practice in various states. A serious defect in many existing state statutes is the absence of any provision concerning foreign professional corporations, although several statutes do specifically provide for admission of foreign professional corporations.

Under the foreign corporation provisions of state business corporation laws, foreign corporations are generally admitted with few if any restrictions other than restrictions as to the use of corporate names. In order to prevent a professional corporation from avoiding the professional corporation laws of the state in which it carries on its practice by incorporating in a state with more lenient professional corporation requirements, Section 19 [35-4-411] requires that foreign corporations comply with the domestic state law requirements concerning corporate purposes and qualification of shareholders, directors and officers. Under Section 6 [35-4-403] a foreign corporation may render professional services only through persons permitted to render such services in the state. Section 11 [35-4-404] concerning responsibility for professional services and security for professional responsibility is applicable to foreign corporations as well as domestic corporations; and foreign corporations are subject to regulation by the licensing authority to the same extent as domestic corporations under Section 26 [35-4-208].

Section 19(b) [35-4-411(2)] requires that a professional corporation obtain a certificate of authority only if the corporation maintains an office in the state. This provision would permit foreign professional corporations greater freedom in rendering professional services in the state without complying with foreign corporation law requirements than is permitted in the case of business corporations.

Compiler's Comments

2007 Amendment: Chapter 240 in (4) in second sentence near end substituted "registered agent" for "registered office in this state"; and made minor changes in style. Amendment effective October 1, 2008.

Source: Section 35-4-411 is based on Section 19 of the Professional Corporation Supplement to the Model Business Corporation Act.

Part 5
Reorganization and Dissolution

35-4-501. Merger and consolidation.

Official Comments

Section 16 [35-4-501] permits mergers and consolidations among professional corporations and business corporations to the extent that professional and business purposes may be combined under Section 3 [35-4-205]. Many existing professional corporation statutes limit mergers and consolidations to domestic professional corporations incorporated for the purpose of rendering the same professional service. Such a limitation would be inconsistent with Section 3 [35-4-205] of this Act permitting a broader statement of purposes and Section 19 [35-4-411] providing for admission of foreign professional corporations.

Compiler's Comments

Source: Section 35-4-501 is based on Section 16 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-502. Termination of all professional services.

Official Comments

Section 17 [35-4-502] resolves any question as to the power of a professional corporation to continue in existence under the business corporation act after it has ceased to render professional services and avoids the forced dissolution of a corporation whose shareholders have died or become disqualified. See comment following Section 10 [35-4-311]. A corporation which has ceased to render professional services and does not dissolve is required to amend its articles to comply with the business corporation law.

Compiler's Comments

Source: Section 35-4-502 is based on Section 17 of the Professional Corporation Supplement to the Model Business Corporation Act.

35-4-503. Involuntary dissolution.

Official Comments

The Attorney General is authorized to enforce the requirements of the professional corporation act by bringing an action for involuntary dissolution on the grounds of failure of the corporation to comply with any provision of the act. Either the licensing authority or the Secretary of State may initiate such proceedings by certifying the grounds for dissolution to the Attorney General.

Compiler's Comments

2019 Amendment: Chapter 271 in (1) at end substituted "35-14-1420 through 35-14-1423" for "Title 35, chapter 6". Amendment effective June 1, 2020.

Source: Section 35-4-503 is based on Section 18 of the Professional Corporation Supplement to the Model Business Corporation Act.

CHAPTER 5
BUSINESS TRUSTS

Part 1
General

35-5-101. Definition of business trust.

Case Notes

Characteristics of Illegitimate Business Trust: A business trust that provides for certificates to be issued to beneficiaries does not constitute a legitimate trust under Montana law. Although a business trust may not have directors or officers like a corporation, the trustees may function in nearly the same manner as a corporation for business purposes. Earmarks of a business trust that are not usually found in an ordinary trust include: (1) centralized management; (2) continuity of life more typical of a business entity; (3) transferability of interests; and (4) limited personal liability. In a business trust, the relationship of the grantor to the property transferred does not differ in any material way before and after the creation of the trust. Although a taxpayer has a legal right to minimize or avoid taxes by any legal means, when the form of a transaction has not altered any cognizable economic relationships, that form will be disregarded and the tax law applied according to the substance of the transaction. In this case, plaintiffs' establishment of a business trust in an effort to avoid paying taxes by transferring personal property to the trust and issuance of units or certificates of beneficial interest, resulting in little material change in economic ownership or reality before and after creation of the trust, were properly disregarded for tax purposes, and plaintiffs were correctly held individually responsible for trust income and expenses. Ruby Mtn. Trust v. Dept. of Revenue, 2000 MT 166, 300 M 297, 3 P3d 654, 57 St. Rep. 688 (2000). See also Morrissey v. Comm'r of Internal Revenue, 296 US 344, 80 L Ed 2d 263, 56 S Ct 289 (1935), and 26 CFR 301.7701-4(b), which classifies a business trust as an abusive trust for tax purposes.

Part 2
Formation and Operation

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process.

Compiler's Comments

2019 Amendment: Chapter 271 in (2) in first sentence near middle substituted "35-14-1503" for "35-1-1028". Amendment effective June 1, 2020.

2015 Amendment: Chapter 280 in (1) near beginning substituted "seeking" for "desiring"; in (1)(a) near middle after "territory" inserted "tribe"; and made minor changes in style. Amendment effective April 23, 2015.

1991 Amendment: In first sentence of (2) substituted "35-1-1028" for "35-1-1008". Amendment effective January 1, 1992.

35-5-205. Taxes and fees.

Compiler's Comments

2001 Amendment: Chapter 396 inserted last sentence requiring that fees must be set and deposited in accordance with 2-15-405; and made minor changes in style. Amendment effective July 1, 2001.

CHAPTER 6
INVOLUNTARY CORPORATE DISSOLUTION

Part 1
Dissolution by Secretary of State

35-6-101. Applicability to corporations presently in default.

Compiler's Comments

2019 Amendment: Chapter 271 in (1) at end substituted "dissolve nonprofit corporations organized under Title 35, chapters 2 and 3" for "dissolve corporations that have been in default prior to July 1, 1977"; inserted (2) relating to administrative dissolution; inserted (3) excluding certain corporations from inclusion in the term "defaulting corporations"; and made minor changes in style. Amendment effective June 1, 2020.

35-6-102. Involuntary dissolution — grounds.

Compiler's Comments

2019 Amendment: Chapter 271 in (1) at beginning substituted "Any domestic corporation organized under Title 35, chapters 2 and 3" for "Any domestic corporation, whether for profit or not for profit"; and made minor changes in style. Amendment effective June 1, 2020.

2007 Amendment: Chapter 240 in (1)(e) near middle after "change of its" deleted "registered office or"; and made minor changes in style. Amendment effective October 1, 2008.

35-6-104. Involuntary dissolution — procedure.

Compiler's Comments

2019 Amendment: Chapter 271 in (5) near middle substituted "35-2-729" for "35-1-938 through 35-1-943 or 35-2-729, whichever is appropriate"; and made minor changes in style. Amendment effective June 1, 2020.

2017 Amendment: Chapter 23 in (2)(a) substituted "delivering" for "mailing"; in (3) after "90 days following the" substituted "delivery" for "mailing"; and in (4) near beginning substituted "delivery" for "mailing". Amendment effective October 1, 2017.

1991 Amendments: Chapter 368 in (1), near beginning, deleted references to April 1 and August 1; in (2), at end of introductory clause after "by", deleted "causing such list to be posted in the state capitol for a period of at least 90 days and"; in (3), near end of introductory clause before "mailing", deleted "posting and"; in (4), near beginning after "following", deleted "posting and"; in (5) substituted "35-1-938 through 35-1-943" for "35-1-921"; and made minor changes in style. Amendment effective January 1, 1992.

Chapter 411 in (5) substituted "35-2-729" for "35-2-711". Amendment effective January 1, 1992.

Case Notes

In-Kind Distribution of Company Assets to Estate Not Error: Following a noncite opinion, Estate of James v. Hunt, 312 M 525N, 55 P3d 419N (2002), the personal representative petitioned for an in-kind distribution of the estate's real property held by trustees of a mining company. Prior to a hearing on the petition, the company board of directors purported to liquidate the estate's property interests by sale to one of its members and then moved to dismiss the petition for in-kind distribution as moot. The District Court voided the liquidation sale on equitable grounds and ordered the board of directors to immediately distribute the estate's fractional share of the now-defunct corporation's assets to the estate in kind. The board of directors appealed on grounds that the District Court erred in ordering the in-kind distribution. The Supreme Court disagreed. Under 35-1-935 (now repealed), in-kind distribution of some corporate assets after dissolution is allowed. Rights to the property that James deeded to the company devolved upon the estate when the sale offer was made, so the board of directors had no authority to sell it. Although the distribution was informal, all company shareholders received a distribution in kind, so the District Court did not err in voiding the sale and ordering the board of directors to deed real property to the state. However, the Supreme Court remanded the case for a determination of James's testamentary intent. In re Estate of James, 2004 MT 314, 324 M 24, 102 P3d 12 (2004).

Stockholders Not Entitled to Sue Upon Corporation's Cause of Action: The Supreme Court ruled that the award of general and special damages to the plaintiffs in their individual capacity was reversible error because there was no evidence that the corporation under which they had done business was dissolved. The court held that shareholders of a corporation were not entitled to individually sue when the cause of action in reality was an asset of the corporation. First Sec. Bank of Glendive v. Gary, 245 M 394, 798 P2d 523, 47 St. Rep. 1646 (1990).

Part 2
Reinstatement

35-6-201. Reinstatement of dissolved corporation — fee.

Compiler's Comments

2019 Amendment: Chapter 271 in (2)(b) after "liquidated pursuant to" deleted "35-1-938 through 35-1-943 or". Amendment effective June 1, 2020.

2003 Amendment: Chapter 75 in (2) near middle after "secretary of state" deleted "one original and one copy of"; inserted (1)(c) concerning annual reports not yet filed; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 396 substituted (3)(b) requiring that filing fee must be set and deposited in accordance with 2-15-405 for "a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendments: Chapter 368 in (2)(b) substituted "35-1-938 through 35-1-943" for "35-1-921". Amendment effective January 1, 1992.

Chapter 411 in (2)(b) substituted "35-2-726 and 35-2-727" for "35-2-711". Amendment effective January 1, 1992.

1983 Amendments: Chapter 131, in (2), substituted "one original and one copy of the" for "in duplicate an"; and made minor phraseology changes.

Chapter 174, in (2), after "executed" deleted "and verified".

35-6-202. Relation back of corporate rights restored.

Case Notes

Homeowners' Association Considered Corporation Despite Involuntary Corporate Dissolution — Defect Cured — Motion to Dismiss for Lack of Standing Denied: At the time of trial, a plaintiff homeowners' association had been involuntarily dissolved as a corporation by the Secretary of State for failure to file its annual report. The association cured the defect and was reinstated. The defendant filed a motion to dismiss the association as a party for lack of standing. The Supreme Court held that the District Court correctly denied the motion because under 35-6-202, a reinstated corporation is considered to be a legal entity from the date of its original incorporation. Gibson v. Paramount Homes, LLC, 2011 MT 112, 360 Mont. 421, 253 P.3d 903.

Church Considered Corporation Despite Involuntary Corporate Dissolution at Time of Gift of Property: A church incorporated in 1998. The attorney who filed the incorporation subsequently moved out of state, and because annual reports were not filed, the Secretary of State involuntarily dissolved the church's corporate status in 2000. The church's corporate status was reinstated in 2004. The church was not aware that it was not a valid corporation when it received a gift of property in 2002. Various parties contributed fill to raise the level of the property, but the fill contained asphalt and garbage. The church sued defendants to recover damages incurred in removing the undesirable materials, and defendants filed a third-party complaint against the couple who donated the property. Despite the church's argument that it was a de facto corporation while it was involuntarily dissolved, the District Court granted defendants' motion for summary judgment on grounds that because the church was not a corporation at the time that the property was donated, it could not acquire ownership of the land and thus lacked standing to bring the suit. On appeal, the Supreme Court reversed. In light of the church's reinstated corporate status, under this section, the church should have been treated as though it were a legal corporation able to accept gifts at the time that the property was donated. Defendants' argument that 35-2-725 should prohibit the church from accepting the property when it was a dissolved corporation also failed because that section governs the acts of corporations that are in liquidation, while this section gives involuntarily dissolved corporations the option for reinstatement and treats a reinstated corporation as an existing legal entity from the date of original incorporation. Valley Victory Church v. Sandon, 2005 MT 72, 326 M 340, 109 P3d 273 (2005).

CHAPTER 7
MODEL REGISTERED AGENTS ACT

Chapter Compiler's Comments

Effective Date: Section 70, Ch. 240, L. 2007, provided that this chapter is effective October 1, 2008.

Part 1
Registered Agents

Part Commission Comment

PREFATORY NOTE

The Model Registered Agents Act (the "Act") [part] is one of several projects undertaken by the Conference and the American Bar Association ("ABA") to integrate state entity laws into a more coherent and rational scheme. Other projects include the development of the Model Entity Transactions Act jointly by the Conference and the ABA and the addition of Chapter 9 to the Model Business Corporation Act by the Committee on Corporate Laws of the ABA Section on Business Law.

The Act [part] grew out of discussions within the International Association of Commercial Administrators ("IACA"), which is the association of state corporation bureaus and similar filing offices in the United States and Canada. IACA was approached by representatives of corporation service companies who were seeking to solve problems they have encountered in their provision of registered agent services. IACA had also been considering on its own how filing requirements in state corporation bureaus could be simplified and standardized. IACA decided that the time was right for it to develop proposed statutory provisions on two subjects:

1. A standard set of provisions that would apply to all forms of entities that are required to designate in a public filing an agent for service of process.
2. A standard form of annual report to be filed with secretaries of state by all forms of entities.

The Ad Hoc Committee on Entity Rationalization of the ABA Section on Business Law (the "ABA Committee") had been working cooperatively with IACA for several years on other projects of mutual interest. After IACA had prepared a first draft of provisions on registered agents and annual reports, the ABA Committee joined the drafting effort. The ABA Committee also approached the leadership of the Conference with the suggestion that the Conference also join the drafting effort. The result was the development of the Act [part].

The original draft of the Act [part] contained separate articles dealing with the two subjects originally identified by IACA: (i) registered agents and (ii) annual report filings. After detailed consideration, the drafting committee and its advisors were all agreed that a separate article on annual reports was not necessary and should be omitted from the Act [part]. Instead, the changes needed to standardize annual report filings are included in the Appendix of conforming amendments to the Act [part]. Thus, the Act [part] has two parts:

1. The provisions of the Act [part] itself, which deal with registered agent issues and apply to all forms of entities.

2. An Appendix of conforming changes to all of the existing uniform, model, and prototype entity laws that have two separate purposes:

some of the conforming amendments integrate the uniform, model, and prototype entity laws with the Act [part] and its new registered agent provisions, and

the remaining conforming amendments standardize the provisions of the uniform, model, and prototype entity laws on annual report filings.

Under existing uniform, model, and prototype entity laws, an entity's registered agent and the location of the registered agent's office serve three purposes:

1. the registered agent is an agent of the entity authorized to receive service of process on behalf of the entity;
2. the location of the office of the registered agent determines where venue is to be laid in certain actions under the entity's organic law; and
3. the location of the office of the registered agent also determines where certain notices required by the entity's organic law are to be published. The first function, that of being an agent for service of process, is the principal reason why the appointment of a registered agent is required under entity organic laws. The remaining two functions made sense at a time when the registered office address of an entity was often a business address for the entity. In recent years, however, it has become common for entities to use as their registered agents businesses whose principal activity is the provision of registered agent services, and thus the address of the registered agent has become divorced from any real connection with the business activities of the represented entity.

The conforming amendments in the Appendix to this Act [appendix not included] accordingly eliminate the functions of the registered office address as the means of determining where venue or publication is appropriate. Venue and publication will be determined by the location of an entity's principal office; or, if the principal office is outside the state, venue and publication will be in a county specified by the legislature (for example, the county where the state capitol is located).

The conforming amendments also eliminate the provisions found in some entity organic laws that make the Secretary of State the default agent for service of process under certain circumstances.

Part Compiler's Comments

Source: The source for this part is the Model Registered Agents Act (Model Act), as adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2006, with very few changes.

35-7-102. Definitions.

Commission Comment

In general. Many of the definitions in this section were developed for use in the Model Entity Transactions Act (META) [not enacted in Montana]. States that have adopted META should consider arranging their entity laws in such a manner that the definitions in META will apply more broadly and do not need to be repeated in other laws. The definitions that are common to this Act and META are:

"domestic entity"
"entity"
"filing entity"
"foreign entity"
"governance interest"
"governor"
"interest"
"interest holder"
"jurisdiction of organization"
"organic law"
"organic rules"
"person"
"private organic rules"
"public organic document"
"qualified foreign entity"
"record"
"sign"
"transferable interest"
"type"

The comments below with respect to defined terms taken from META are substantively the same as the corresponding comments in META.

"Appointment of agent." [(1)] - An appointment of agent is an optional filing that may be made by an entity that does not otherwise make a public filing in the state naming an agent for service of process. If a state has not enacted the Uniform Unincorporated Nonprofit Association Act [not enacted in Montana], paragraph (A) of this definition should be omitted.

"Commercial registered agent." [(2)] - A commercial registered agent is an individual or entity that is in the business of serving as a registered agent in the state and that files a listing statement under Section 6 [35-7-106]. Being listed as a commercial registered agent is voluntary and persons serving as registered agents are not required to be listed under Section 6 [35-7-106]. The benefits to the registered agent of being listed under Section 6 [35-7-106], however, are substantial and most registered agents will elect to be so listed. Although this definition and Section 6 [35-7-106] do not expressly require that a foreign entity that is listed as a commercial registered agent be qualified to do business in the state, the activity of serving as a registered agent is one that requires such registration.

"Domestic entity." [(3)] - The term "domestic entity" in this Act [part] means an entity whose internal affairs are governed by the organic laws of the adopting state. Except in the case of general partnerships and unincorporated nonprofit associations, this will mean an entity that is formed, organized, or incorporated under domestic law. In the case of a general partnership organized under the Uniform Partnership Act (1997) (RUPA) [see Title 35, ch. 10], it will mean a general partnership whose governing law under RUPA § 106 is the law of the adopting state. Under RUPA § 106 the governing law is determined by the location of the partnership's chief executive office, except for limited liability partnerships where the governing law is the state where the statement of qualification is filed. It is a factual question whether the activities and organization of an unincorporated nonprofit association make it a domestic or foreign entity.

This definition is patterned after Model Entity Transactions Act § 102(9) ("domestic entity").

"Entity." [(4)] - The term "entity" includes:

Business corporation.
Business or statutory trust.
General partnership, whether or not a limited liability partnership.
Limited liability company.
Limited partnership, whether or not a limited liability limited partnership.
Nonprofit corporation.
Unincorporated nonprofit association.

The term does not include a sole proprietorship.

This definition is intended to include all forms of private organizations, regardless of whether organized for profit, and artificial legal persons other than those excluded by paragraphs (A) through (E). Thus, this definition is broader than the definition of "business entity" in, e.g., Code of Ala. § 10-15-2(2) which does not include nonprofit entities. This definition does not exclude regulated entities such as public utilities, banks and insurance companies.

Inter vivos and testamentary trusts are treated in many states as having a separate legal existence, but they have been excluded from the definition of "entity." Trusts that carry on a business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust, or other common law or statutory business trusts are "entities."

Section 4 of the Uniform Unincorporated Nonprofit Association Act gives an unincorporated nonprofit association the power to acquire an estate in real property and thus an unincorporated nonprofit association organized in a state that has adopted that act will be an "entity." At common law, an unincorporated nonprofit association was not a legal entity and did not have the power to acquire real property. Most states that have not adopted the Uniform Act have nonetheless modified the common law rule, but states that have not adopted the Uniform Act should analyze whether they should modify the definition of "entity" to add an express reference to unincorporated nonprofit associations.

There is some question as to whether a partnership subject to the Uniform Partnership Act (1914) (UPA) is an entity or merely an aggregation of its partners. That question has been resolved by Section 201 of the Uniform Partnership Act (1997) (RUPA), which makes clear that a general partnership is an entity with its own separate legal existence. Section 8 of UPA gives partnerships subject to it the power to acquire estates in real property and thus such a partnership will be an "entity." As a result, all general partnerships will be "entities" regardless of whether the state in which they are organized has adopted RUPA.

Paragraph (C) [35-7-102(4)(c)] of this definition excludes from the concept of an "entity" any form of co-ownership of property or sharing of returns from property that is not a partnership under RUPA. In that connection, Section 202(c) of RUPA provides in part:

In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

Limited liability partnerships and limited liability limited partnerships are "entities" because they are general partnerships and limited partnerships, respectively, that have made the additional required election claiming LLP or LLLP status. A limited liability partnership is not, therefore, a separate type of entity from the underlying general or limited partnership that has elected limited liability partnership status.

This definition is patterned after Model Entity Transactions Act § 102(13) ("entity").

"Filing entity." [(5)] - Whether an entity is a filing entity is determined by reference to whether its legal existence is attributable to the filing of a document with the state filing officer. While the statute refers to an entity that is "created," it is intended to encompass corporations which are "incorporated," limited liability companies which are "organized," and limited partnerships which are "formed" by a filing required by the organic law governing the entity. Business trusts (sometimes referred to as "statutory trusts") present a special problem. In some states, for example, a business trust is a filing entity, while in other states business trusts are recognized only by common law.

The term does not include a limited liability partnership because an election filed by a general partnership claiming that status (e.g., a statement of qualification under Uniform Partnership Act (1997), § 1001) does not create the entity. A limited liability limited partnership, on the other hand, is a filing entity because the underlying limited partnership is created by filing a certificate of limited partnership.

This definition is patterned after Model Entity Transactions Act § 102(14) ("filing entity"). See also Model Business Corporation Act § 1.40(9B) ("filing entity").

"Foreign entity." [(6)] - The term "foreign entity" includes any non-domestic entity of any type. Where a foreign entity is a filing entity, the entity is governed by the laws of the state of filing. A nonfiling foreign entity is governed by the laws of the state governing its internal affairs. It is a factual question whether a general partnership whose internal affairs are governed by the Uniform Partnership Act (1914) (UPA) is a domestic or foreign partnership. A UPA partnership will likely be deemed to be a domestic entity where the greatest nexus of contacts are found. Similar issues arise with respect to determining the domestic or foreign status of unincorporated nonprofit associations. The domestic or foreign characterization of partnerships under the Uniform Partnership Act (1997) (RUPA) that have not registered as limited liability partnerships will be governed by RUPA § 106(a) ("state where the partnership's chief executive office is located").

This definition is patterned after Model Entity Transactions Act § 102(15) ("foreign entity").

"Foreign qualification document." [(7)] - This definition should be construed broadly to include filings in the state that are required when a foreign entity is conducting activities in the state, regardless of whether the process is referred to as "obtaining a certificate of authority to do business," "qualifying to do business," "being authorized to transact business," or some other formulation.

"Governance interest." [(8)] - A governance interest is typically only part of the interest that a person will hold in an entity and is usually coupled with a transferable interest (or economic rights). However, memberships in some nonprofit corporations and unincorporated nonprofit associations consist solely of governance interests and memberships in other nonprofit entities may not include either governance interests or transferable interests. In some unincorporated business entities, there is a more limited right to transfer governance interests than there is to transfer transferable interests. An interest holder in such an unincorporated business entity who transfers only a transferable interest and retains the governance interest will also retain the status of an interest holder. Whether a transferee who acquires only a transferable interest will acquire the status of an interest holder is determined by the definition of "interest holder."

Shares in a business corporation that are nonvoting nonetheless have a governance interest because they entitle the holder to certain rights of access to information and to certain statutory voting rights on amendments of the articles of incorporation.

Governors of an entity have the kinds of rights listed in the definition of "governance interest" by reason of their position with the entity. For a governor to have a "governance interest," however, requires that the governor also have those rights for a reason other than the governor's status as such. A manager who is not a member in a limited liability company, for example, will not have a governance interest, but a manager who is a member will have a governance interest arising from the ownership of a membership interest.

This definition is patterned after Model Entity Transactions Act § 102(16) ("governance interest").

"Governor." [(9)] - This term has been chosen to provide a way of referring to a person who has the authority under an entity's organic law to make management decisions regarding the entity that is different from any of the existing terms used in connection with particular types of entities. *Compare* Colo. § 7-90-102(35.7) which uses the term "manager" to refer to this concept, even though "manager" is also a term of art in connection with limited liability companies. Depending on the type of entity or its organic rules, the governors of an entity may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. In other words, a person having only the power to bind the organization pursuant to the instruction of the governors is not a governor. Under the organic rules, particularly those of unincorporated entities, most or all of the management decisions may be reserved to the members or partners. Thus, if a manager of a limited liability company were limited to having authority to execute management decisions made by the members and did not have any authority to make independent management decisions, the manager would not be a governor under this definition.

Except as described above, the term "governor" includes:
Director of a business corporation.
Director or trustee of a nonprofit corporation.
General partner of a general partnership.
General partner of a limited partnership.
Manager of a limited liability company.
Member of a member-managed limited liability company.
Trustee of a business or statutory trust.

This definition is patterned after Model Entity Transactions Act § 102(17) ("governor").

"Interest." [(10)] - In the usual case, the interest held by an interest holder will include both a governance interest and a transferable interest (or economic rights). Members in many nonprofit corporations or unincorporated nonprofit associations do not have a transferable interest because they do not receive distributions, but they nonetheless may hold a governance interest in which case they would have the status of interest holders under the Act. An interest holder in an unincorporated business entity may transfer all or part of the interest holder's transferable interest without the transferee acquiring the governance interest of the transferor. In that case, whether the transferor will retain the status of an interest holder will be determined by the applicable organic law and the transferee will have the status of an interest holder under paragraph (B) [35-7-102(10)(b)] of this definition. That paragraph will also apply to subsequent transferees from the original transferee.

The term "interest" includes:
Beneficial interest in a business or statutory trust.
Membership in a nonprofit corporation.
Membership in an unincorporated nonprofit association.
Membership interest in a limited liability company.
Partnership interest in a general partnership.
Partnership interest in a limited partnership.
Shares in a business corporation.

This definition is patterned after Model Entity Transactions Act § 102(18) ("interest").

"Interest holder." [(11)] - This Act does not refer to "equity" interests or "equity" owners or holders because the term "equity" could be confusing in the case of a nonprofit entity whose members do not have an interest in the assets or results of operations of the entity but only have a right to vote on its internal affairs. *Compare* Code of Ala. § 10-15-2(4) ("equity owner").

The term "interest holder" includes:
Beneficiary of a business or statutory trust.
General partner of a general partnership.

General partner of a limited partnership.
Limited partner of a limited partnership.
Member of a limited liability company.
Member of a nonprofit corporation.
Member of an unincorporated nonprofit association.
Shareholder of a business corporation.

This definition is patterned after Model Entity Transactions Act § 102(20) ("interest holder"). See also Model Business Corporation Act § 1.40(13B) ("interest holder").

"Jurisdiction of organization." [(12)] - The term "jurisdiction of organization" refers to the jurisdiction whose laws include the organic law of the entity.

This definition is patterned after Model Entity Transactions Act § 102(22) ("jurisdiction of organization").

"Noncommercial registered agent." [(13)] - A noncommercial registered agent is a person that serves as an agent for service of process but that is not listed under Section 6 [35-7-106]. All agents for service of process that are not commercial registered agents are noncommercial registered agents.

"Nonqualified foreign entity." [(14)] - A nonqualified foreign entity is a foreign entity for which there is no foreign qualification document in effect in the adopting state.

"Nonresident LLP statement." [(15)] - A nonresident LLP statement is the filing that is made by a limited liability partnership under Section 1001 of the Uniform Partnership Act (1997).

"Organic law." [(16)] - Organic law means statutes other than this Act [part] that govern the internal affairs of an entity. Entity laws in a few states purport to require that some of their internal governance rules applicable to a domestic entity also apply to a foreign entity with significant ties to the state. *See, e.g.*, Cal. Gen. Corp. Law § 2115, N.Y. N-PCL §§ 1318-1321, 15 Pa.C.S. § 6145. Such a "sticky fingers" law is included within the definition of "organic law" for purposes of the Act [part].

If a state has adopted the Model Entity Transactions Act, it should amend this definition to also exclude that act from the term "organic law."

This definition is patterned after Model Entity Transactions Act § 102(26) ("organic law"). See also Model Business Corporation Act § 1.40(15B) ("organic law").

"Organic rules." [(17)] - The term "organic rules" means an entity's public organic document and its private organic rules.

This definition is patterned after Model Entity Transactions Act § 102(27) ("organic rules").

"Person." [(18)] - The term "person" has the standard meaning of that term in uniform acts.

"Private organic rules." [(19)] - The term private "organic rules" is intended to include all governing rules of an entity that are binding on all of its interest holders, whether or not in written form, except for the provisions of the entity's public organic document, if any. The term is intended to include agreements in "record" form as well as oral partnership agreements and oral operating agreements among LLC members. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

The term "private organic rules" includes:
Bylaws of a business corporation.
Bylaws of a business or statutory trust.
Bylaws of a nonprofit corporation.
Constitution and bylaws of an unincorporated nonprofit association.
Operating agreement of a limited liability company.
Partnership agreement of a general partnership.
Partnership agreement of a limited partnership.

This definition is patterned after Model Entity Transactions Act § 102(30) ("private organic rules"). Compare Model Business Corporation Act § 1.40(17A) ("private organic document").

"Public organic document." [(20)] - A "public organic document" is a document that is filed of public record to form, organize, incorporate, or otherwise create an entity. The term does not include a statement of partnership authority filed under Section 303 of the Uniform Partnership Act (1997) or any of the other statements that may be filed under that act since those statements do not create a new entity. A limited liability partnership is the same entity as the partnership that files the statement. For the same reason, the term also does not include a statement of qualification filed under Section 1001 of that act to become a limited liability partnership. Similarly, the term does not include a statement of authority filed under Section 5 of the Uniform Unincorporated Nonprofit Association Act or a statement appointing an agent filed under Section 10 of that act. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

The term "public organic document" includes:

Articles of incorporation of a business corporation.

Articles of incorporation of a nonprofit corporation.

Certificate of limited partnership.

A Certificate of organization of a limited liability company. In those states where a deed of trust or other instrument is publicly filed to create a business trust, that filing will constitute a public organic document. But in those states where a business trust is not created by a public filing, the deed of trust or similar document will be part of the private organic rules of the business trust.

This definition is patterned after Model Entity Transactions Act § 102(32) ("public organic document").

"Qualified foreign entity." [(21)] - A qualified foreign entity is a foreign entity for which there is a foreign qualification document in effect in the adopting state.

This definition is patterned after Model Entity Transactions Act § 102(33) ("qualified foreign entity").

"Record." [(22)] - The term "record" has the standard meaning of that term in uniform acts.

"Registered agent." [(23)] - This term is used in the Act [part] to refer to agents for service of process in contexts where it is not necessary to differentiate between commercial registered agents and noncommercial registered agents.

"Registered agent filing." [(24)] - Some states require that filings in addition to those listed in this definition, such as articles of amendment or articles of merger, state the registered agent information of the entity making the filing. In states where that is the case, this definition should be amended to add the following additional provision:

"(E) any other filing with the [Secretary of State] under an entity's organic law that must include the information required by Section 5(a) [35-7-105(1)]."

"Represented entity." [(25)] - This definition lists the various classes of entities for which registered agents act as agents for service of process.

"Sign." [(26)] - The term "sign" has the standard meaning of that term in uniform acts.

"Transferable interest." [(27)] - The term "transferable interest" is taken from Section 102(22) of the Uniform Limited Partnership Act (2001) [see Title 35, ch. 12].

This definition is patterned after Model Entity Transactions Act § 102(38) ("transferable interest").

"Type." [(28)] - The term "type" has been developed in an attempt to distinguish different legal forms of entities. It is sometimes difficult to decide whether one is dealing with a different form of entity or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of entity from a general partnership, while a limited liability partnership is not a different type of entity from a general partnership. In some states cooperative corporations are categories of business corporations or nonprofit corporations, while in other states cooperatives are a separate type of entity.

This definition is patterned after Model Entity Transactions Act § 102(39) ("type").

Compiler's Comments

Source: Section 2, Model Act.

35-7-103. Fees.

Commission Comment

Subsection (a) establishes the filing fees for each type of document that may be filed under the Act. The dollar amounts for each filing should be inserted by the adopting state with reference to the filing fees charged for other filings with the Secretary of State.

Subsection (a)(4) provides that a fee is not required in connection with a filing of a statement of resignation. That permits a person who is named as a registered agent without the person's consent, or who agrees to serve as registered agent for a fee and the fee is not paid, to reflect properly the status of the person in the records of the Secretary of State without expense.

Subsection (b) establishes fees for copying and certifying documents filed under the Act. The dollar amounts for these fees should be inserted by the adopting state with reference to the fees charged for those services under the state's various entity organic laws.

This section is patterned after Section 1.22 of the Model Business Corporation Act. [None of these subsections were enacted in Montana. Rather, Montana enacted the language of this section in conformance with an NCCUSL legislative note that provided: "In a state where filing fees are set by rule making, this section may be replaced with the statement "The [Secretary of State] shall by rule set fees for filings, and the services provided, under this [act]."

35-7-104. Addresses in filings.

Commission Comment

When this Act [part] requires that a filing state an address, the address used must always be a geographic location. Where a person uses a post office box as its mailing address, paragraph (2) [35-7-104(2)] requires that the post office box address also be stated.

Compiler's Comments

Source: Section 4, Model Act.

35-7-105. Appointment of registered agent.

Commission Comment

Subsection (a)(1) [35-7-105(1)(a)] gives an entity the option of listing just the name of its commercial registered agent in a registered agent filing and omitting the address of the registered agent. If the commercial registered agent subsequently changes its address, that change will be reflected in the filing made by the agent under Section 6 [35-7-106], as amended under Section 10 [35-7-110], but no change will be necessary in the registered agent filing of any of the entities represented by the commercial registered agent. The address of an entity's commercial registered agent may be ascertained from the records of the Secretary of State by consulting its listing under Section 6 [35-7-106].

The address of an entity's noncommercial registered agent is usually not a business address of the represented entity. On the other hand, subsection 5(a)(2)(B) [35-7-105(1)(b)] permits an entity to designate a person within the organization, such as its general counsel, to serve as its registered agent; and in that circumstance the address of the registered agent may very well be a business address of the represented entity [subsection 5(a)(2)(B) not enacted in Montana].

The addresses required by subsection (a) [35-7-105(1)] to be stated in a registered agent filing must satisfy the requirements in Section 4 [35-7-104].

Subsection (b) [35-7-105(2)] avoids the need to include with a registered agent filing a consent of the registered agent to serve as such.

Subsection (c) [35-7-105(3)] creates a procedure that will permit registered agents to determine if they have been named in filings of which they were not aware by periodically consulting the list prepared by the Secretary of State. Subsection (c) requires the registered agents to be listed in alphabetical order [requirement for alphabetical listing not enacted in Montana] to facilitate the use of the list by registered agents and also to indicate the type of filing (e.g., articles of incorporation, certificates of limited partnership, appointments of agents under Section 12 of this Act [35-7-112], etc.) in which each registered agent is named. Subsection (c) [35-7-105(3)] will not be necessary under the circumstances described in the Legislative Note because registered agents may consult the regular database maintained by the Secretary of State to verify when they have been named as a registered agent. [The legislative note provided: "Subsection (c) may be omitted if (i) the records of the Secretary of State are searchable electronically in a manner that permits filings to be identified by the date of the filing and by the name of the registered agent named in the filing, and (ii) the searchable database is updated frequently."]

Subsection (a) [35-7-105(1)] is a generalization of Section 5.01 of the Model Business Corporation Act, Section 114 of the Uniform Limited Partnership Act, and Section 108 of the Uniform Limited Liability Company Act [see Title 35, ch. 8].

Compiler's Comments

Source: Section 5, Model Act.

35-7-106. Listing of commercial registered agent.

Commission Comment

This section is a substantial simplification of practice because it removes the need to amend the filed record of every entity represented by a commercial registered agent when the agent changes its address.

Subsection (a)(3) [35-7-106(1)(c)] only permits a commercial registered agent to list one address where service of process and other notices may be sent to entities represented by the agent. This may require a change in practice for registered agents who have previously maintained more than one address in a state and have permitted represented entities to choose which address they would use in their registered agent filings. A corporation, for example, located in one part of a state might include in its articles of incorporation an address for its registered agent which is the address of an office of the agent located close to the corporation and which is different than the address used by a corporation in another part of the state which has the same registered agent but uses a different office of the agent. In the example given, the registered agent will need to pick just one address in the state where all service of process will be sent to it. If a commercial registered agent wishes to maintain more than one office in a state where service of process will be received by it, it can accomplish that result by organizing separate entities to conduct its business in the state and filing separate statements for each entity under this section.

The address required by subsection (a)(3) [35-7-106(1)(c)] to be stated in a commercial registered agent listing statement must satisfy the requirements in Section 4 [35-7-104].

Subsection (e) [35-7-106(4)] is a transitional provision that deals with the effect on the entities represented by a registered agent at the time the agent is first listed under this section. The effect is to amend the registered agent filing of each such entity to delete the address of the registered agent consistent with Section 5(a)(1) [35-7-105(1)(a)].

This section is patterned generally after 15 Pa.C.S. § 109.

Compiler's Comments

Source: Section 6, Model Act.

35-7-107. Termination of listing of commercial registered agent.

Commission Comment

This section provides a procedure for a commercial registered agent to withdraw from the business of providing registered agent services. Use of the procedure in this section will terminate the status of the registered agent as the agent for service of process of all the entities represented by the agent. Thus, the procedure in this section differs from the procedure in Section 11 [35-7-111], which permits a registered agent to resign with respect to just a single represented entity instead of resigning generally with respect to all of its represented entities.

Compiler's Comments

Source: Section 7, Model Act.

35-7-108. Change of registered agent by entity.

Commission Comment

Changes of the registered agent or the office address of a registered agent are usually routine matters that do not affect the rights of the interest holders of the represented entity. This section permits those changes to be made without a formal amendment of an entity's public organic document, without approval of its interest holders, and, indeed, even without formal approval by its governors (i.e., the persons managing the entity's affairs, such as the board of directors of a corporation).

Subsection (c) [35-7-108(3)] avoids the need to file with a statement of change a consent of the new registered agent being designated.

Subsection (e) [35-7-108(5)] makes clear that the procedures in this section are not exclusive. A common way in which an entity changes its registered agent or registered office is to include the change in an amendment of its public organic document.

Subsection (a) [35-7-108(1)] is a generalization of Section 5.02(a) of the Model Business Corporation Act, Section 115 of the Uniform Limited Partnership Act, and Section 109 of the Uniform Limited Liability Company Act. As to subsection (c) [35-7-108(3)], compare Section 5.02(a)(5) of the Model Business Corporation Act. Subsection (d) [35-7-108(4)] is patterned after Section 115(b) of the Uniform Limited Partnership Act.

Compiler's Comments

Source: Section 8, Model Act.

35-7-109. Change of name or address by noncommercial registered agent.

Commission Comment

This section permits a noncommercial registered agent to change the name and address of the agent that appears in the registered agent filing of an entity represented by the agent. Because the noncommercial registered agent is not listed under Section 6 [35-7-106], the agent will not be able to use the procedures in Section 10 [35-7-110] which permit commercial registered agents to make only one filing to change their name and address for all entities represented by them. Thus the noncommercial registered agent will need to make a filing under this section for each entity represented by the agent.

An address included in a statement of change must satisfy the requirements in Section 4 [35-7-104].

This section is patterned after 15 Pa.C.S. § 108.

Compiler's Comments

Source: Section 9, Model Act.

35-7-110. Change of name, address, or type of organization by commercial registered agent.

Commission Comment

This section permits a commercial registered agent to make a single filing that has the effect of changing the name or address of the agent for all of the entities represented by it.

An address included in a statement of change must satisfy the requirements in Section 4 [35-7-104].

Subsection (e) [35-7-110(5)] provides a procedure by which the Secretary of State may cancel the listing of a commercial registered agent when the Secretary of State learns that the agent has changed its address without amending its listing as a commercial registered agent. When the Secretary of State acts to cancel the listing of a commercial registered agent, the Secretary of State is required to notify both (i) the entities represented by the agent that they no longer have a valid registered agent and (ii) the agent that it no longer is listed as a commercial registered agent. Unlike in the case of a resignation under Section 11 [35-7-111] which is initiated by the registered agent and thus does not require a notice from the Secretary of State to the agent, notice by the Secretary of State to the agent is needed under this section so that the agent has notice that its representation of the entities it previously represented has terminated under Section 7 [35-7-107].

This section is patterned after 15 Pa.C.S. . 109(b).

Compiler's Comments

2017 Amendment: Chapter 23 in (5) in third sentence substituted "shall deliver notice on" for "shall serve notice in a record in the manner provided in 35-7-113(2) or (3) on". Amendment effective October 1, 2017.

Source: Section 10, Model Act.

35-7-111. Resignation of registered agent.

Commission Comment

Resignation under this section may be accomplished solely by action of the registered agent and does not require the cooperation or consent of the represented entity. Whether a resignation violates a contract between the registered agent and the represented entity is beyond the scope of this Act [part] and subsection (d) [35-7-111(4)] preserves whatever claims a represented entity may have against its registered agent for a wrongful termination. Even if a resignation were to violate such a contract, the resignation would still be effective if the provisions of this section are followed.

Resignation under this section relates only to the entity named in the statement of resignation. Thus, the procedure in this section differs from the procedure in Section 7 [35-7-107] which terminates the status of the agent as agent for all of the entities represented by it.

The requirements of Section 4 [35-7-104] with respect to addresses do not apply to subsection (a)(4) [35-7-111(1)(d)] because the registered agent may not have all the required information available.

Subsection (b) [35-7-111(2)] delays the effectiveness of a statement of resignation for 31 days to allow the notice of the resignation that must be sent under subsection (c) [35-7-111(3)] to reach the represented entity and to allow the represented entity to arrange for a substitute registered agent.

Subsection (e) [35-7-111(5)] makes clear that a registered agent may resign with respect to an entity that is not in good standing and supersedes the contrary administrative practice in some states of refusing to accept any filings with respect to an entity that is not in good standing until the problem with the entity's standing is cured.

Subsection (a) [35-7-111(1)] is a generalization of Section 5.03(a) of the Model Business Corporation Act, Section 116(a) of the Uniform Limited Partnership Act, and Section 110(a) of the Uniform Limited Liability Company Act. Subsection (b) [35-7-111(2)] is a generalization of Section 5.03(c) of the Model Business Corporation Act, Section 116(c) of the Uniform Limited Partnership Act, and Section 110(c) of the Uniform Limited Liability Company Act. Subsection (c) [35-7-111(3)] is derived from Section 5.03(b) of the Model Business Corporation Act, Section 116(b) of the Uniform Limited Partnership Act, and Section 110(b) of the Uniform Limited Liability Company Act, except that notice under this Act is to be given by the resigning registered agent rather than the Secretary of State.

Compiler's Comments

Source: Section 11, Model Act.

35-7-112. Appointment of agent by nonfiling or nonqualified foreign entity.

Commission Comment

Filing under this section is elective, and no inference should be drawn from the failure of an entity to make such a filing.

Subsection (a) [35-7-112(1)] is patterned after Section 10 of the Uniform Unincorporated Nonprofit Association Act.

Compiler's Comments

Source: Section 12, Model Act.

35-7-113. Service of process on entities.

Commission Comment

Subsection (c) [not enacted in Montana] provides a means for serving process on an entity that cannot be served under subsection (a) [35-7-113(1)] or (b) [only part of (b) enacted in Montana as 35-7-113(2)]. Some entity organic laws require that service of process in that circumstance be made on the Secretary of State, but that leaves unanswered the question of what the Secretary of State should do with the process. Subsection (c) [not enacted in Montana] is patterned after Pa. R.Civ.Proc. 423(3) and 424(2). A similar approach is taken by Fed. R.Civ.Proc. 4(h)(1).

Subsections (a) [35-7-113(1)] and (d) [only part of (d) enacted in Montana as 35-7-113(4)] are a generalization of Section 5.04(a) and (c) of the Model Business Corporation Act, Section 117(a) and (f) of the Uniform Limited Partnership Act, and Section 111(a) and (e) of the Uniform Limited Liability Company Act. Subsection (b) [only part of (b) enacted in Montana as 35-7-113(2)] is a generalization of Section 5.04(b) of the Model Business Corporation Act.

Compiler's Comments

Source: Section 13, Model Act.

35-7-114. Duties of registered agent.

Commission Comment

This section is limited to prescribing the duties of a registered agent under this Act [part]. An agent may undertake other responsibilities to a represented entity, such as by contract or course of dealing, but those duties will be determined under other law.

The Delaware General Corporation Law has been amended to add a new Section 132(b)(1), 8 Del. Code § 132(b)(1), requiring a registered agent to be generally available in the state to accept service of process. It was not considered necessary to include that provision in the Act [part] because Section 13 [35-7-113] provides alternative means of serving process if a registered agent cannot with reasonable diligence be served.

The Delaware General Corporation has also been amended to require a represented corporation to notify its registered agent when the corporation changes its business address and to permit a registered agent to resign if it is not supplied with current contact information. 8 Del. Code § 132(d). Section 11 of the Act [35-7-111] provides registered agents with a broader right to resign than is available under the Delaware amendment.

Compiler's Comments

Source: Section 14, Model Act.

35-7-115. Jurisdiction.

Commission Comment

As discussed in the Introduction to the Act [part], one of the purposes of the Act [part] is to eliminate the registered office address as a means of determining where venue is to be laid in an action involving a represented entity. Consistent with that purpose, this section makes clear that the address of a registered agent does not determine venue. This section may be inconsistent with other law or procedural rules in a state, and thus existing law on venue should be reviewed when this Act [part] is considered for adoption in a state. *Compare Cooper v. Chevron U.S.A., Inc.*, 132 N.M. 382, 49 P.3d 61 (N.M. 2002) (applying New Mexico statute permitting venue "in the county where the statutory agent designated by the foreign corporation resides") [language concerning venue not enacted in Montana].

Compiler's Comments

Source: Section 15, Model Act.

Case Notes

No Personal Jurisdiction Based on Registration and Conducting Business in State — Dismissal of FELA Claims Affirmed: Three of the defendant's employees, one who resided in Missouri and two in Texas, filed cases under the Federal Employers' Liability Act against their employer in Montana District Court. The defendant filed a motion to dismiss for lack of personal jurisdiction. The plaintiffs argued that Montana had personal jurisdiction over the defendant because it conducted business in Montana and had registered to do business in the state. After the District Court granted the defendant's motion to dismiss, the plaintiffs appealed to the Supreme Court. The Supreme Court affirmed, ruling that personal jurisdiction cannot be achieved under such circumstances unless the defendant consents to jurisdiction. DeLeon v. BNSF Ry. Co., 2018 MT 219, 392 Mont. 446, 426 P.3d 1.

35-7-116. Consistency of application.

Commission Comment

A provision similar to this section is included in each uniform act promulgated by the Conference. Because this Act [part] is not a uniform act, however, the usual formulation of this section has been changed from "uniformity" of application to "consistency" of application to promote the same policy while recognizing the different nature of this Act [part].

Compiler's Comments

Source: Section 16, Model Act.

CHAPTER 8
MONTANA LIMITED LIABILITY COMPANY ACT

Chapter Official Comments

PREFATORY NOTE

Borrowing from abroad, Wyoming initiated a national movement in 1977 by enacting this country's first limited liability company act. The movement started slowly as the Internal Revenue Service took more than ten years to announce finally that a Wyoming limited liability company would be taxed like a partnership. Since that time, every State has adopted or is considering its own distinct limited liability company act, many of which have already been amended one or more times.

The allure of the limited liability company is its unique ability to bring together in a single business organization the best features of all other business forms — properly structured, its owners obtain both a corporate-styled liability shield and the pass-through tax benefits of a partnership. General and limited partnerships do not offer their partners a corporate-styled liability shield. Corporations, including those having made a Subchapter Selection, do not offer their shareholders all the pass-through tax benefits of a partnership. All state limited liability company acts contain provisions for a liability shield and partnership tax status.

Despite these two common themes, state limited liability company acts display a dazzling array of diversity. Multistate activities of businesses are widespread. Recognition of out-of-state limited liability companies varies. Unfortunately, this lack of uniformity manifests itself in basic but fundamentally important questions, such as: may a company be formed and operated by only one owner; may it be formed for purposes other than to make a profit; whether owners have the power and right to withdraw from a company and receive a distribution of the fair value of their interests; whether a member's dissociation threatens a dissolution of the company; who has the apparent authority to bind the company and the limits of that authority; what are the fiduciary duties of owners and managers to a company and each other; how are the rights to manage a company allocated among its owners and managers; do the owners have the right to sue a company and its other owners in their own right as well as derivatively on behalf of the company; may general and limited partnerships be converted to limited liability companies and may limited liability companies merge with other limited liability companies and other business organizations; what is the law governing foreign limited liability companies; and are any or all of these and other rules simply default rules that may be modified by agreement or are they nonwaivable.

Practitioners and entrepreneurs struggle to understand the law governing limited liability companies organized in their own State and to understand the burgeoning law of other States. Simple questions concerning where to organize are increasingly complex. Since most state limited liability company acts are in their infancy, little if any interpretative case law exists. Even when case law develops, it will have limited precedential value because of the diversity of the state acts.

Accordingly, uniform legislation in this area of the law appeared to have become urgent.

After a Study Committee appointed by the National Conference of Commissioners in late 1991 recommended that a comprehensive project be undertaken, the Conference appointed a Drafting Committee which worked on a Uniform Limited Liability Company Act (ULLCA) from early 1992 until its adoption by the Conference at its Annual Meeting in August 1994. The Drafting Committee was assisted by a blue ribbon panel of national experts and other interested and affected parties and organizations. Many, if not all, of those assisting the Committee brought substantial experience from drafting limited liability company legislation in their own States. Many are also authors of leading treatises and articles in the field. Those represented in the drafting process included an American Bar Association (ABA) liaison, four advisors representing the three separate ABA Sections of Business Law, Taxation, and Real Property, Trust and Probate, the United States Treasury Department, the Internal Revenue Service, and many observers representing several other organizations, including the California Bar Association, the New York City Bar Association, the American College of Real Estate Lawyers, the National Association of Certified Public Accountants, the National Association of Secretaries of State, the Chicago and Lawyers Title Companies, the American Land Title Association, and several university law and business school faculty members.

The Committee met nine times and engaged in numerous national telephonic conferences to discuss policies, review over fifteen drafts, evaluate legal developments and consider comments by our many knowledgeable advisers and observers, as well as an ABA subcommittee's earlier work on a prototype. In examining virtually every aspect of each state limited liability company act, the Committee maintained a single policy vision — to draft a flexible act with a comprehensive set of default rules designed to substitute as the essence of the bargain for small entrepreneurs and others.

This Act is flexible in the sense that the vast majority of its provisions may be modified by the owners in a private agreement. Only limited and specific fundamental matters may not be altered by private agreement. To simplify, those nonwaivable provisions are set forth in a single subsection. Helped thereby, sophisticated parties will negotiate their own deal with the benefit of counsel.

The Committee also recognized that small entrepreneurs without the benefit of counsel should also have access to the Act. To that end, the great bulk of the Act sets forth default rules designed to operate a limited liability company without sophisticated agreements and to recognize that members may also modify the default rules by oral agreements defined in part by their own conduct. Uniquely, the Act combines two simple default structures which depend upon the presence of designations in the articles of organization. All default rules under the Act flow from these two designations.

First, unless the articles reflect that a limited liability company is a term company and the duration of that term, the company will be an at-will company. Generally, the owners of an at-will company may demand a payment of the fair value of their interests at any time. Owners of a term company must generally wait until the expiration of the term to obtain the value of their interests. Secondly, unless the articles reflect that a company will be managed by managers, the company will be managed by its members. This designation controls whether the members or managers have apparent agency authority, management authority, and the nature of fiduciary duties in the company.

In January of 1995 the Executive Committee of the Conference adopted an amendment to harmonize the Act with new and important Internal Revenue Service announcements, and the amendment was ratified by the National Conference at its Annual Meeting in August of 1995. Those Internal Revenue Service announcements generally provide that a limited liability company will not be taxed like a corporation regardless of its organizational structure. Freed from the old tax classification restraints, the amendment modifies the Act's dissolution provision by eliminating member dissociation as a dissolution event. This important amendment significantly increases the stability of a limited liability company and places greater emphasis on a limited liability company's required purchase of a dissociated member's interest.

The adoption of ULLCA will provide much needed consistency among the States, with flexible default rules, and multistate recognition of limited liability on the part of company owners. It will also promote the development of precedential case law.

Chapter Compiler's Comments

Source: This chapter is modeled after the Uniform Limited Liability Company Act (ULLCA) (1996).

Chapter Administrative Rules

ARM 44.5.115 Limited liability company fees.

Chapter Law Review Articles

Master Limited Partnerships: A Step in the Renewable Direction, Gryder, 81 Mont. L. Rev. 97 (2020), https://scholarworks.umt.edu/mlr/vol81/iss1/4/.

Application of Corporate Common Law Doctrines to Limited Liability Companies, Bahls, 55 Mont. L. Rev. 43 (1994).

Part 1
General Provisions

35-8-101. Short title.

Compiler's Comments

Source: Section 1202, ULLCA.

35-8-102. Definitions.

Official Comments

Uniform Limited Liability Company Act ("ULLCA") definitions, like the rest of the Act, are a blend of terms and concepts derived from the Uniform Partnership Act ("UPA"), the Uniform Partnership Act (1994) ("UPA 1994", also previously known as the Revised Uniform Partnership Act or "RUPA"), the Revised Uniform Limited Partnership Act ("RULPA"), the Uniform Commercial Code ("UCC"), and the Model Business Corporation Act ("MBCA"), or their revisions from time to time; some are tailored specially for this Act [Title 35, ch. 8].

"Business." A limited liability company may be organized to engage in an activity either for or not for profit. The extent to which contributions to a nonprofit company may be deductible for Federal income tax purposes is determined by federal law. Other state law determines the extent of exemptions from state and local income and property taxes.

"Debtor in bankruptcy." The filing of a voluntary petition operates immediately as an "order for relief." See Sections 601(7)(i) [35-8-803(7)(a)] and 602(b)(2)(iii) [35-8-804(2)(b)(iii)].

"Distribution." This term includes all sources of a member's distributions including the member's capital contributions, undistributed profits, and residual interest in the assets of the company after all claims, including those of third parties and debts to members, have been paid.

"Distributional interest." The term does not include a member's broader rights to participate in the management of the company. See Comments to Article 5 [Title 35, ch. 8, part 7].

"Foreign limited liability company." The term is not restricted to companies formed in the United States.

"Manager." The rules of agency apply to limited liability companies. Therefore, managers may designate agents with whatever titles, qualifications, and responsibilities they desire. For example, managers may designate an agent as "President."

"Manager-managed company." The term includes only a company designated as such in the articles of organization. In a manager-managed company agency authority is vested exclusively in one or more managers and not in the members. See Sections 101(10) (manager) [subsection 18], 203(a)(6) (articles designation) [35-8-202(1)(d)], and 301(b) [35-8-301(2)] (agency authority of members and managers).

"Member-managed limited liability company." The term includes every company not designated as "manager-managed" under Section 203(a)(6) [35-8-202(1)(d)] in its articles of organization.

"Operating agreement." This agreement may be oral. Members may agree upon the extent to which their relationships are to be governed by writings.

"Principal office." The address of the principal office must be set forth in the annual report required under Section 211(a)(3) [35-8-208(1)(c)].

"Record." This Act [Title 35, ch. 8] is the first Uniform Act promulgated with a definition of this term. The definition brings this Act [Title 35, ch. 8] in conformity with the present state of technology and accommodates prospective future technology in the communication and storage of information other than by human memory. Modern methods of communicating and storing information employed in commercial practices are no longer confined to physical documents.

The term includes any writing. A record need not be permanent or indestructible, but an oral or other unwritten communication must be stored or preserved on some medium to qualify as a record. Information that has not been retained other than through human memory does_not qualify as a record. A record may be signed or may be created without the knowledge or intent of a particular person. Other law must be consulted to determine admissibility in evidence, the applicability of statute of frauds, and other questions regarding the use of records. Under Section 206(a) [35-8-205(1)], electronic filings may be permitted and even encouraged.

Compiler's Comments

2015 Amendment: Chapter 280 in definition of articles of organization in second sentence inserted "tribe"; in definitions of foreign corporation, foreign limited liability company in (b), and foreign limited partnership substituted "a law other than the law of this state, including the laws of a federally recognized Indian tribe" for references to the laws of any state other than Montana or under the laws of any foreign country; in definition of foreign professional limited liability company substituted "a law other than the law of this state, including the laws of a federally recognized Indian tribe" for "the laws of any state other than Montana"; and made minor changes in style. Amendment effective April 23, 2015.

2013 Amendment: Chapter 183 inserted definition of series of members; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 33 inserted definition of authorized agent; and made minor changes in style. Amendment effective October 1, 2007.

1999 Amendment: Chapter 302 in definition of articles of organization inserted second sentence concerning foreign limited liability company; inserted definitions of at-will company, business, debtor in bankruptcy, distribution, distributional interest, manager-managed company, member-managed company, record, sign, and term company; in definition of event of dissociation at end deleted "as provided in 35-8-802"; in definition of foreign limited liability company in (a) and (c) substituted "entity" for "association"; deleted definition of limited liability company interest that read: ""Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under 35-8-704 and that is available to creditors under 35-8-705"; in definition of manager substituted "a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301" for "with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person designated in accordance with 35-8-302"; in definition of operating agreement near beginning substituted "including amendments" for "written or oral" and after "company" inserted "and the relations among the members, managers, and the company"; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 101, ULLCA.

Case Notes

No Breach of Duty to Company by Repayment of Loans to Members Before Payment of Company Debts: On the morning of a concert sponsored by plaintiff company, several members loaned money to the company to pay the bands so the concert could proceed. After the concert, the members' loans were repaid from concert proceeds rather than paying a company debt to a bank, ultimately leaving the company insolvent. Some members of the company contended that this act constituted an unlawful distribution of company assets and that the members who authorized the loan repayments were personally liable to the company for the amounts that they caused to be paid to themselves. The District Court granted summary judgment to defendants, and on appeal, the Supreme Court affirmed. Under 35-8-604, a company may not make distributions to members if the distributions render the company unable to pay its debts, which includes a repayment of capital contributions that a member made to the company. However, in this case, the amounts advanced to the company to salvage the concert were personal loans made in the ordinary course of company business, and 35-8-504 allows a company to reimburse members for money loaned to the company, so the company had both the obligation and the right to repay the members' loans. The company had more legitimate debt than it could pay, and the decision to repay the members' loans was simply a business decision. Even though the members who authorized the payment were acting in a managerial position, they were not liable for making a legitimate business decision to pay one creditor in preference to another. Lynes v. Helm, 2007 MT 226, 339 M 120, 168 P3d 651 (2007).

35-8-103. Name.

Compiler's Comments

2019 Amendment: Chapter 271 in (3) at end substituted "35-14-401" for "35-1-308"; and in (4) at end substituted "35-14-401" for "35-1-310". Amendment effective June 1, 2020.

2001 Amendment: Chapter 27 inserted (1)(b) prohibiting the use of a business name identifier in the name of a limited liability company; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 229 inserted (3) providing that use of name of limited liability company or partnership is governed by 35-1-308; and made minor changes in style. Amendment effective April 2, 1999.

Source: This section is based on § 105 of the ULLCA but was modified to conform the standard in subsection (4) to corporate law and to prohibit names not distinguishable from reserved names and from other names registered with the Secretary of State.

Administrative Rules

ARM 44.5.131 Distinguishable on/in the record(s).

35-8-104. Reservation of name.

Official Comments

A foreign limited liability company that is not presently authorized to transact business in the State may reserve a fictitious name for a nonrenewable 120-day period. When its actual name is available, a company will generally register that name under Section 107 [35-8-108] because the registration is valid for a year and may be extended indefinitely.

Compiler's Comments

1999 Amendment: Chapter 229 deleted former (3) that read: "(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of 120 days each from the date of renewal"; and made minor changes in style. Amendment effective April 2, 1999.

Source: This section is modeled after § 106 of the ULLCA.

35-8-106. Purpose.

Compiler's Comments

2015 Amendment: Chapter 205 in (2) inserted second sentence concerning the term "insurance". Amendment effective April 8, 2015.

Source: This section is based on 35-1-114, MCA (now repealed).

35-8-107. Powers — scope.

Official Comments

A limited liability company may be organized for any lawful purpose unless the State has specifically prohibited a company from engaging in a specific activity. For example, many States require that certain regulated industries, such as banking and insurance, be conducted only by organizations that meet the special requirements. Also, many States impose restrictions on activities in which a limited liability company may engage. For example, the practice of certain professionals is often subject to special conditions.

A limited liability company has the power to engage in and perform important and necessary acts related to its operation and function. A company's power to enter into a transaction is distinguishable from the authority of an agent to enter into the transaction. See Section 301 (agency rules) [35-8-301].

Compiler's Comments

2013 Amendment: Chapter 183 inserted (2) regarding limited liability companies that have a series of members; and made minor changes in style. Amendment effective October 1, 2013.

Source: This section is based on § 112, ULLCA.

35-8-108. Registered name of foreign limited liability company — registration renewal.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 42 deleted former (2)(b) that read: "(b) accompanied by a certificate of existence or a similar document from the state or country where it was organized"; inserted (2)(e) regarding statement of compliance for foreign limited liability company; and made minor changes in style. Amendment effective February 18, 2015.

Chapter 280 in (2)(b) and former (2)(b) (deleted by Ch. 42) inserted "tribe". Amendment effective April 23, 2015.

2013 Amendment: Chapter 183 inserted (2)(a)(v) authorizing information regarding a series of members to be submitted with a registered name application; and made minor changes in style. Amendment effective October 1, 2013.

Effective Date: Section 25, Ch. 229, L. 1999, provided that this section is effective on passage and approval. Approved April 2, 1999.

Source: Section 107, ULLCA.

35-8-109. Effect of operating agreement — nonwaivable provisions.

Official Comments

The operating agreement is the essential contract that governs the affairs of a limited liability company. Since it is binding on all members, amendments must be approved by all members unless otherwise provided in the agreement. Although many agreements will be in writing, the agreement and any amendments may be oral or may be in the form of a record. Course of dealing, course of performance and usage of trade are relevant to determine the meaning of the agreement unless the agreement provides that all amendments must be in writing.

This section makes clear that the only matters an operating agreement may not control are specified in subsection (b) [subsection (3)]. Accordingly, an operating agreement may modify or eliminate any rule specified in any section of this Act [Title 35, ch. 8] except matters specified in subsection (b) [subsection (3)]. To the extent not otherwise mentioned in subsection (b) [subsection (3)], every section of this Act [Title 35, ch. 8] is simply a default rule, regardless of whether the language of the section appears to be otherwise mandatory. This approach eliminates the necessity of repeating the phrase "unless otherwise agreed" in each section and its commentary.

Under subsection (b)(1) [subsection (3)(a)], an operating agreement may not unreasonably restrict the right to information or access to any records under Section 408 [35-8-405]. This does not create an independent obligation beyond Section 408 [35-8-405] to maintain any specific records. Under subsections (b)(2) to (4) [subsection (3)(b) through (3)(d)], an irreducible core of fiduciary responsibilities survive any contrary provision in the operating agreement. Subsection (b)(2)(i) [subsection (3)(b)(i)] authorizes an operating agreement to modify, but not eliminate, the three specific duties of loyalty set forth in Section 409(b)(1) to (3) [35-8-310(2)(a) through (2)(c)] provided the modification itself is not manifestly unreasonable, a question of fact. Subsection (b)(2)(ii) [subsection (3)(b)(ii)] preserves the common law right of the members to authorize future or ratify past violations of the duty of loyalty provided there has been a full disclosure of all material facts. The authorization or ratification must be unanimous unless otherwise provided in an operating agreement, because the authorization or ratification itself constitutes an amendment to the agreement. The authorization or ratification of specific past or future conduct may sanction conduct that would have been manifestly unreasonable under subsection (b)(2)(i) [subsection (3)(b)(i)].

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 103, ULLCA.

Case Notes

Motion to Amend Answer Properly Denied — Counterclaims Subject to Arbitration Agreement: The District Court denied the respondents' motion for leave to file an amended answer under Rule 15(a), M.R.Civ.P. (Title 25, ch. 20), that would have added tort counterclaims to a limited liability company (LLC) dissolution proceeding. In denying the motion, the District Court reasoned that the LLC operating agreement required binding arbitration to settle disputes of this nature and that allowing the counterclaims would result in additional claims, protracted discovery, and additional delay while causing prejudice and detriment to the petitioners. On appeal, the Supreme Court affirmed the District Court and determined that the counterclaims would have been legally insufficient and futile based on the arbitration clause in the operating agreement. Gordon v. Kuzara, 2012 MT 206, 366 Mont. 243, 286 P.3d 895, distinguishing Gordon v. Kuzara, 2010 MT 275, 358 Mont. 432, 245 P.3d 37.

35-8-110. Purpose — supplemental principles of law — interest rate.

Official Comments

Supplementary principles include, but are not limited to, the law of agency, estoppel, law merchant, and all other principles listed in UCC Section 1-103 [30-1-103], including the law relative to the capacity to contract, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating and invalidating clauses. Other principles such as those mentioned in UCC Section 1-205 (Course of Dealing and Usage of Trade) [30-1-205] apply as well as course of performance. As with UPA 1994 Section 104 [35-10-104], upon which this provision is based, no substantive change from either the UPA or the UCC is intended. Section 104(b) [subsection (2)] establishes the applicable rate of interest in the absence of an agreement among the members.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 104, ULLCA.

35-8-111. Uniformity of application and construction.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 1201, ULLCA.

Part 2
Formation

35-8-201. Formation.

Official Comments

A limited liability company is legally distinct from its members who are not normally liable for the debts, obligations, and liabilities of the company. See Section 303 [35-8-304]. Accordingly, members are not proper parties to suits against the company unless an object of the proceeding is to enforce members' rights against the company or to enforce their liability to the company.

Any person may organize a limited liability company by performing the ministerial act of signing and filing the articles of organization. The person need not be a member. As a matter of flexibility, a company may be organized and operated with only one member to enable sole proprietors to obtain the benefit of a liability shield. New and important Internal Revenue Service announcements clarify that a one-member limited liability company will not be taxed like a corporation. Nor will it be taxed like a partnership since it lacks at least two members. Rather, a one-member limited liability company is disregarded for Federal tax purposes and its operations are reported on the return of its single owner.

The existence of a company begins when the articles are filed. Therefore, the filing of the articles of organization is conclusive as to the existence of the limited liability shield for persons who enter into transactions on behalf of the company. Until the articles are filed, a firm is not organized under this Act [Title 35, ch. 8] and is not a "limited liability company" as defined in Section 101(9) [35-8-102(16)]. In that case, the parties' relationships are not governed by this Act [Title 35, ch. 8] unless they have expressed a contractual intent to be bound by the provisions of the Act [Title 35, ch. 8]. Third parties would also not be governed by the provisions of this Act [Title 35, ch. 8] unless they have expressed a contractual intent to extend a limited liability shield to the members of the would-be limited liability company.

Compiler's Comments

1999 Amendment: Chapter 302 in (1) in first sentence after "company" inserted "consisting of one or more members" and inserted third sentence concerning distinct legal entity; inserted (2) concerning delayed effective date; inserted (3) concerning filing as conclusive proof; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Sections 201 and 202, ULLCA.

35-8-202. Articles of organization.

Official Comments

The articles serve primarily a notice function and generally do not reflect the substantive agreement of the members regarding the business affairs of the company. Those matters are generally reserved for an operating agreement which may be unwritten. Under Section 203(b) [subsection (1)], the articles may contain provisions permitted to be set forth in an operating agreement. Where the articles and operating agreement conflict, the operating agreement controls as to members but the articles control as to third parties. The articles may also contain any other matter not inconsistent with law. The most important is a Section 301(c) [35-8-702] limitation on the authority of a member or manager to transfer interests in the company's real property.

A company will be at-will unless it is designated as a term company and the duration of its term is specified in its articles under Section 203(a)(5) [subsection (1)(b)]. The duration of a term company may be specified in any manner which sets forth a specific and final date for the dissolution of the company. For example, the period specified may be in the form of "50 years from the date of filing of the articles" or "the period ending on January 1, 2020." Mere specification of a particular undertaking of an uncertain business duration is not sufficient unless the particular undertaking is within a longer fixed period. An example of this type of designation would include "2020 or until the building is completed, whichever occurs first." When the specified period is incorrectly specified, the company will be an at-will company. Notwithstanding the correct specification of a term in the articles, a company will be an at-will company among the members under Section 203(c)(1) [subsection (3)(a)] if an operating agreement so provides. A term company that continues after the expiration of its term specified in its articles will also be an at-will company.

A term company possesses several important default rule characteristics that differentiate it from an at-will company. An operating agreement may alter any of these rules. Generally, a member of an at-will company may rightfully dissociate at any time whereas a dissociation from a term company prior to the expiration of the specified term is wrongful. See Comments to Section 602(b) [35-8-804]. Accordingly, a dissociated member of an at-will company is entitled to have the company purchase that member's interest for its fair value determined as of the date of the member's dissociation. A dissociated member of a term company must generally await the expiration of the agreed term to withdraw the fair value of the interest determined at as of the date of the expiration of the agreed term. Thus, a dissociated member in an at-will company receives the fair value of their interest sooner than in a term compnay [sic] and also does not bear the risk of valuation changes for the remainder of the specified term. See Comments to Section 701(a) [35-8-808(1)].

A company will be member-managed unless it is designated as manager-managed under Section 203(a)(6) [subsection (1)(d)(i)]. Absent further designation in the articles, a company will be a member-managed at-will company. The designation of a limited liability company as either member- or manager-managed is important because it defines who are agents and have the apparent authority to bind the company under Section 301 [35-8-302]. In a member-managed company, the members have the agency authority to bind the company. In a manager-managed company only the managers have that authority. New and important Internal Revenue Service announcements clarify that the agency structure of a limited liability company will not cause it to be taxed like a corporation. The agency designation relates only to agency and does not preclude members of a manager-managed company from participating in the actual management of company business. See Comments to Section 404(b) [35-8-307(2)].

Compiler's Comments

2013 Amendment: Chapter 183 inserted (1)(h), (1)(i), (1)(j), and (4) concerning a series of members; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 26 in (1)(c), (1)(e)(i), and (1)(e)(ii) substituted references to "business mailing address" for references to "street address". Amendment effective October 1, 2011.

2007 Amendment: Chapter 240 in (1)(c) at end substituted "office, wherever located" for "place of business in this state and, if different, its registered office and the name and complete street address of its registered agent at the registered office in this state"; inserted (1)(d) concerning information required by 35-7-105(1); and made minor changes in style. Amendment effective October 1, 2008.

2003 Amendment: Chapter 75 in (1)(c) in two places, substituted "complete street address" for "address". Amendment effective October 1, 2003.

1999 Amendments — Composite Section: Chapter 229 near middle of (1)(c) substituted "registered agent" for "resident agent". Amendment effective April 2, 1999.

Chapter 302 substituted (1)(b) concerning term company for former text that read: "the latest date on which the limited liability company is to dissolve"; deleted former (1)(d) that read: "(d) a statement of whether the limited liability company is to be managed by a manager or by its members"; near middle of (1)(d)(ii) inserted "a statement that the company is to be managed in that fashion and"; inserted (1)(e) concerning liability for debts; inserted (3) concerning nonwaivable provisions and operating agreement inconsistency with articles of organization; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 203, ULLCA.

35-8-203. Amendment of articles of organization — restatement.

Official Comments

An amendment to the articles requires the consent of all the members unless an operating agreement provides for a lesser number. See Section 404(c)(3) [35-8-307(3)(c)].

Compiler's Comments

1999 Amendment: Chapter 229 inserted third sentence in (3) providing that restated articles supersede original articles and amendments. Amendment effective April 2, 1999.

Source: Section 204, ULLCA.

35-8-204. Execution of documents.

Official Comments

Both a writing and a record may be signed. An electronic record is signed when a person adds a name to the record with the intention to authenticate the record. See Sections 101(16) ("record" definition) [35-8-102(27)] and 101(17) ("signed" definition) [35-8-102(28)].

Other provisions of this Act [Title 35, ch. 8] also provide for the filing of records with the filing office but do not require signing by the persons specified in clauses (1) to (3) [subsections (1)(a) through (1)(c)]. Those specific sections prevail.

Compiler's Comments

Source: This section is based on § 205, ULLCA.

35-8-205. Filing with secretary of state.

Official Comments

The definition and use of the term "record" permits filings with the filing office under this Act [Title 35, ch. 8] to conform to technological advances that have been adopted by the filing office. However, since Section 206(a) provides that the filing "must be in a medium permitted by the [Secretary of State]" [subsection (1) provides that the filing "conform to the filing requirements of this chapter"], the Act [Title 35, ch. 8] simply conforms to filing changes as they are adopted.

Compiler's Comments

2013 Amendment: Chapter 183 inserted (3) regarding documents filed with the secretary of state by limited liability companies with a series of members. Amendment effective October 1, 2013.

2005 Amendment: Chapter 71 in (1) at beginning of first sentence after "The" deleted "original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the"; in (1)(a) near beginning substituted "document" for "original and duplicate copy"; in (1)(b) substituted "document" for "original"; in (1)(c) at beginning substituted "send a certification letter" for "return the duplicate copy"; and made minor changes in style. Amendment effective October 1, 2005.

Source: This section is based on § 206, ULLCA. See also § 1004, ULLCA.

Administrative Rules

ARM 44.5.115 Limited liability company fees.

35-8-206. Effect of filing articles of organization.

Compiler's Comments

2005 Amendment: Chapter 71 in (1) substituted "filed with" for "delivered to"; in (2) at beginning deleted "Each copy of"; and made minor changes in style. Amendment effective October 1, 2005.

Source: This section is modeled after § 206 of the ULLCA.

35-8-207. Filing of facsimile copy.

Compiler's Comments

1997 Amendment: Chapter 290 at end of first sentence in (1) deleted "provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy"; deleted introductory phrase and (1)(a), (1)(b), (2), and (3) that read: "A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void"; and made minor changes in style. Amendment effective April 18, 1997.

Source: This section is based on 35-12-615, MCA.

35-8-208. Annual report for secretary of state.

Official Comments

Failure to deliver the annual report within 60 [140] days after its due date is a primary ground for administrative dissolution of the company under Section 809 [35-8-209]. See Comments to Sections 809 to 812 [35-8-209 and 35-8-911, now repealed, through 35-8-913].

Compiler's Comments

2017 Amendment: Chapter 23 in (4) after "shall promptly" substituted "deliver a notice to" for "notify" and after "foreign limited liability company" deleted "in writing". Amendment effective October 1, 2017.

2013 Amendment: Chapter 183 inserted (1)(e) concerning a series of members; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 26 in (1)(c) before "address" inserted "business mailing"; in (1)(d)(i) substituted "business mailing addresses" for "street addresses"; and in (1)(d)(ii) inserted "and the names and business mailing addresses of the members". Amendment effective October 1, 2011.

2007 Amendments — Composite Section: Chapter 33 in (5) at end substituted "or by the authorized agent" for "and must include the street address of the member"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 240 in (1)(a) near middle substituted "jurisdiction" for "state or country"; substituted (1)(b) concerning information required by 35-7-105(1) for former text that read: "the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state"; in (1)(c) at end inserted "wherever located"; and made minor changes in style. Amendment effective October 1, 2008.

1999 Amendment: Chapter 302 deleted former (1)(e) that read: "(e) the last date upon which the limited liability company is to be dissolved"; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 211, ULLCA.

Administrative Rules

ARM 44.5.301 Requirements for annual report online filing.

ARM 44.5.302 Form of annual report.

35-8-209. Administrative dissolution — rules.

Official Comments

Administrative dissolution is an effective enforcement mechanism for a variety of statutory obligations under this Act [Title 35, ch. 8] and it avoids the more expensive judicial dissolution process. When applicable, administrative dissolution avoids wasteful attempts to compel compliance by a company abandoned by its members.

Compiler's Comments

2007 Amendment: Chapter 240 in (1)(a)(i) after "change of its" deleted "registered office or". Amendment effective October 1, 2008.

1999 Amendment: Chapter 302 inserted (1)(a)(ii) concerning failure to appoint and maintain a registered agent; inserted (1)(d) concerning fraud; inserted (1)(e) concerning excess or abuse of authority; substituted (2) concerning dissolution by secretary of state for former text that read: "(2) The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1)"; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on § 809, ULLCA, and 35-6-102(1)(e), MCA, and see 35-8-911, MCA (now repealed).

35-8-211. Fees for filing, copying, and services.

Compiler's Comments

2001 Amendment: Chapter 396 substituted (2) requiring that fees must be set and deposited in accordance with 2-15-405 for former (3) that read: "(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section"; and made minor changes in style. Amendment effective July 1, 2001.

Source: This section is based on the Montana tradition of establishing fees by administrative rule; see 35-1-1206, MCA (now repealed).

Administrative Rules

ARM 44.5.115 Limited liability company fees.

ARM 44.5.121 Miscellaneous fees.

35-8-212. Filing fees.

Compiler's Comments

2005 Amendment: Chapter 71 in (1)(a) and (1)(b) at beginning substituted "an additional filing fee" for "a license fee". Amendment effective October 1, 2005.

2001 Amendment: Chapter 396 in (1)(a) and (1)(b) after "fee" deleted "of $50"; inserted (2) requiring that fees must be set and deposited in accordance with 2-15-405; and made minor changes in style. Amendment effective July 1, 2001.

35-8-215. Correcting filed record.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 207, ULLCA.

35-8-216. Certificate of existence or authority.

Compiler's Comments

2001 Amendment: Chapter 7 in (1) near end after "certificate of" substituted "authority" for "authorization"; in introductory clause of (3) after "certificate of" substituted "authority" for "authorization"; and in (4) near beginning after "existence or" substituted "authority" for "authorization". Amendment effective October 1, 2001.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 208, ULLCA.

35-8-217. Liability for false statement in filed record.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 209, ULLCA.

35-8-218. Filing by judicial act.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 210, ULLCA.

35-8-219. Knowledge and notice.

Official Comments

Knowledge requires cognitive awareness of a fact, whereas notice is based on a lesser degree of awareness. The Act [Title 35, ch. 8] imposes constructive knowledge under limited circumstances. See Comments to Sections 301(c) [35-8-702], 703 [35-8-811], and 704 [35-8-812].

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 102, ULLCA.

Part 3

Relations of Members and Managers to Persons Dealing With Limited Liability Company

35-8-301. Agency power of members and managers.

Official Comments

Members of a member-managed and managers of manager-managed company, as agents of the firm, have the apparent authority to bind a company to third parties. Members of a manager-managed company are not as such agents of the firm and do not have the apparent authority, as members, to bind a company. Members and managers with apparent authority possess actual authority by implication unless the actual authority is restricted in an operating agreement. Apparent authority extends to acts for carrying on in the ordinary course the company's business and business of the kind carried on by the company. Acts beyond this scope bind the company only where supported by actual authority created before the act or ratified after the act.

Ordinarily, restrictions on authority in an operating agreement do not affect the apparent authority of members and managers to bind the company to third parties without notice of the restriction. However, the restriction may make a member or manager's conduct wrongful and create liability to the company for the breach. This rule is subject to three important exceptions. First, under Section 301(c) [35-8-702(1)], a limitation reflected in the articles of organization on the authority of any member or manager to sign and deliver an instrument affecting an interest in company real property is effective when filed, even to persons without knowledge of the agent's lack of authority. New and important Internal Revenue Service announcements clarify that the agency structure of a limited liability company will not cause it to be taxed like a corporation. Secondly, under Section 703 [35-8-811], a dissociated member's apparent authority terminates two years after dissociation, even to persons without knowledge of the dissociation. Thirdly, under Section 704 [35-8-812], a dissociated member's apparent authority may be terminated earlier than the two years by filing a statement of dissociation. The statement is effective 90 days after filing, even to persons without knowledge of the filing. Together, these three provisions provide constructive knowledge to the world of the lack of apparent authority of an agent to bind the company.

Compiler's Comments

2017 Amendment: Chapter 189 inserted (5) concerning representation of limited liability company. Amendment effective April 11, 2017.

Source: Sections 301 and 702, ULLCA.

35-8-302. Admissions of members and managers.

Compiler's Comments

Source: This section is modeled after § 302 of the ABA Prototype Act.

35-8-304. Liability of members, managers, and series of members to third parties.

Official Comments

A member or manager, as an agent of the company, is not liable for the debts, obligations, and liabilities of the company simply because of the agency. A member or manager is responsible for acts or omissions to the extent those acts or omissions would be actionable in contract or tort against the member or manager if that person were acting in an individual capacity. Where a member or manager delegates or assigns the authority or duty to exercise appropriate company functions, the member or manager is ordinarily not personally liable for the acts or omissions of the officer, employee, or agent if the member or manager has complied with the duty of care set forth in Section 409(c) [35-8-310(3)].

Under Section 303(c) [subsection (3)], the usual liability shield may be waived, in whole or in part, provided the waiver is reflected in the articles of organization and the member has consented in writing to be bound by the waiver. The importance and unusual nature of the waiver consent requires that the consent be evidenced by a writing and not merely an unwritten record. See Comments to Section 205 [35-8-204]. New and important Internal Revenue Service annuouncements [sic] clarify that the owner liability structure of a limited liability company (other than a foreign limited liability company formed outside the United States) will not cause it to be taxed like a corporation.

Compiler's Comments

2013 Amendment: Chapter 183 inserted (4) concerning debts and obligations of a series of members. Amendment effective October 1, 2013.

2009 Amendment: Chapter 88 in (1) near beginning after "provided in" inserted "39-51-1105 and"; and made minor changes in style. Amendment effective March 25, 2009.

1999 Amendment: Chapter 302 at beginning of (1) inserted exception clause; inserted (3) concerning liability in capacity as members; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

1997 Amendment: Chapter 268 inserted (2) precluding failure to observe usual company business practices as a ground for imposing personal liability on members or managers of a limited liability company; and made minor changes in style.

Source: Section 303, ULLCA.

Case Notes

Assignment of Legal Claims From LLC to Its Sole Member — Standing Not Conferred — Legal Representation of LLC Required — District Court Ruling That Member Lacked Standing Affirmed on Appeal. Sagorin v. Sunrise Heating & Cooling, LLC, 2022 MT 58, 408 Mont. 119, 506 P.3d 1028.

Members of Limited Liability Companies Liable for Personal Acts Otherwise Actionable Under Contract or Tort Actions: The Whites entered into a construction contract with Longley for the construction of their home. Subsequently, Longley failed to build a house that could be occupied or salvaged. Longley argued that he could not be held liable under contract or tort as he had done business as a limited liability company. The Supreme Court held that the Montana Limited Liability Company Act and the Act's official comments made it clear that a member of a limited liability company was not liable solely on the basis of being a member but could be liable for personal actions that were in violation of contract or tort law. White v. Longley, 2010 MT 254, 358 Mont. 268, 244 P.3d 753, distinguished in Weaver v. Tri-County Implement, Inc., 2013 MT 309, 372 Mont. 267, 311 P.3d 808.

Service Upon Limited Liability Company Not Constituting Service Upon Individual Company Members — No Joinder of Member Solely for Executing on Judgment Against Company: Plaintiff obtained a judgment against a limited liability company, but when plaintiff discovered that the company had no assets to levy against, plaintiff moved to levy judgment against defendant personally. The motion was dismissed without prejudice, and plaintiff appealed, but the Supreme Court affirmed. Although defendant knew of the lawsuit involving the company, defendant was not separately served, and service upon the company did not constitute service upon the individual members of the company. Further, the District Court did not err in refusing to join defendant after judgment was rendered solely for the purpose of executing judgment because doing so would have deprived defendant of the due process right to notice and the opportunity to be heard. Ioerger v. Reiner, 2005 MT 155, 327 M 424, 114 P3d 1028 (2005), following S-W Co. v. Schwenk, 173 M 481, 568 P2d 145 (1977), Hadford v. Credit Bureau of Havre, Inc., 1998 MT 179, 289 M 529, 962 P2d 1198 (1998), Mtn. W. Bank v. Mine & Mill Hydraulics, Inc., 2003 MT 35, 314 M 248, 64 P3d 1048 (2003), and Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

35-8-306. Limited liability company liability for member's or manager's conduct.

Official Comments

Since a member of a manager-managed company is not as such an agent, the acts of the member are not imputed to the company unless the member is acting under actual or apparent authority created by circumstances other than membership status.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 302, ULLCA.

35-8-307. Management and voting.

Official Comments

In a member-managed company, each member has equal rights in the management and conduct of the company's business unless otherwise provided in an operating agreement. For example, an operating agreement may allocate voting rights based upon capital contributions rather than the subsection (a) [subsection (1)] per capita rule. Also, member disputes as to any matter relating to the company's business may be resolved by a majority of the members unless the matter relates to a matter specified in subsection (c) (unanimous consent required) [subsection (3)]. Regardless of how the members allocate management rights, each member is an agent of the company with the apparent authority to bind the company in the ordinary course of its business. See Comments to Section 301(a) [35-8-301(1)]. A member's right to participate in management terminates upon dissociation. See Section 603(b)(1) [35-8-805(2)(a)].

In a manager-managed company, the members, unless also managers, have no rights in the management and conduct of the company's business unless otherwise provided in an operating agreement. If there is more than one manager, manager disputes as to any matter relating to the company's business may be resolved by a majority of the managers unless the matter relates to a matter specified in subsection (c) (unanimous member consent required) [subsection (3)]. Managers must be designated, appointed, or elected by a majority of the members. A manager need not be a member and is an agent of the company with the apparent authority to bind the company in the ordinary course of its business. See Sections 101(10) [35-8-102(18)] and 301(b) [35-8-301(2)].

To promote clarity and certainty, subsection (c) [subsection (3)] specifies those exclusive matters requiring the unanimous consent of the members, whether the company is member- or manager-managed. For example, interim distributions, including redemptions, may not be made without the unanimous consent of all the members. Unless otherwise agreed, all other company matters are to be determined under the majority of members or managers rules of subsections (a) and (b) [subsections (1) and (2)].

Compiler's Comments

2013 Amendment: Chapter 183 inserted (4) and (7) concerning a series of members; and made minor changes in style. Amendment effective October 1, 2013.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 404, ULLCA.

Case Notes

Sufficient Evidence to Warrant Award of Damages and Costs for Interference in Winding Up of Partnership: The District Court awarded defendant Weiss damages and legal costs after finding that Cullinan, one of the partners in a limited liability company, acted arbitrarily and wrongfully interfered with the orderly winding up and dissolution of the company. The partner appealed, but the Supreme Court affirmed. Under 35-8-809, expenses and attorney fees are payable if a party to the proceeding did not act in good faith. The District Court found that Cullinan denied and attempted to renegotiate an exclusive marketing agreement, attempted to prevent payment of partnership debts, obstructed another partner's attempts to obtain financing, and attempted to terminate a partnership escrow arrangement. These actions constituted sufficient evidence of arbitrary and vexatious conduct by Cullinan to warrant the award of damages and fees. The District Court also correctly determined that Cullinan failed to prove that Weiss had breached any fiduciary obligations owed to the company or to Cullinan as a member of the company. Bio-Septic Systems, LLC v. Weiss, 2002 MT 318, 313 M 136, 60 P3d 943 (2002).

35-8-310. General standards of member's and manager's conduct.

Official Comments

Under subsections (a), (c), and (h) [subsections (1), (3), and (8)], members and managers, and their delegatees [sic], owe to the company and to the other members and managers only the fiduciary duties of loyalty and care set forth in subsections (b) and (c) [subsections (2) and (3)] and the obligation of good faith and fair dealing set forth in subsection (d) [subsection (4)]. An operating agreement may not waive or eliminate the duties or obligation, but may, if not manifestly unreasonable, identify activities and determine standards for measuring the performance of them. See Section 103(b)(2) to (4) [35-8-109(2)(b) through (2)(d)].

Upon a member's dissociation, the duty to account for personal profits under subsection (b)(1) [subsection (2)(a)], the duty to refrain from acting as or representing adverse interests under subsection (b)(2) [subsection (2)(b)], and the duty of care under subsection (c) [subsection (3)] are limited to those derived from matters arising or events occurring before the dissociation unless the member participates in winding up the company's business. Also, the duty not to compete terminates upon dissociation. See Section 603(b)(3) and (b)(2) [35-8-805(2)(c) and (2)(b)]. However, a dissociated member is not free to use confidential company information after dissociation. For example, a dissociated member of a company may immediately compete with the company for new clients but must exercise care in completing on-going client transactions and must account to the company for any fees from the old clients on account of those transactions. Subsection (c) [subsection (3)] adopts a gross negligence standard for the duty of care, the standard actually used in most partnerships and corporations.

Subsection (b)(2) [subsection (2)(b)] prohibits a member from acting adversely or representing an adverse party to the company. The rule is based on agency principles and seeks to avoid the conflict of opposing interests in the mind of the member agent whose duty is to act for the benefit of the principal company. As reflected in subsection (f) [subsection (6)], the rule does not prohibit the member from dealing with the company other than as an adversary. A member may generally deal with the company under subsection (f) [subsection (6)] when the transaction is approved by the company.

Subsection (e) [subsection (5)] makes clear that a member does not violate the obligation of good faith under subsection (d) [subsection (4)] merely because the member's conduct furthers that member's own interest. For example, a member's refusal to vote for an interim distribution because of negative tax implications to that member does not violate that member's obligation of good faith to the other members. Likewise, a member may vote against a proposal by the company to open a shopping center that would directly compete with another shopping center in which the member owns an interest.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 409, ULLCA.

Case Notes

No Breach of Duty to Company by Repayment of Loans to Members Before Payment of Company Debts: On the morning of a concert sponsored by plaintiff company, several members loaned money to the company to pay the bands so the concert could proceed. After the concert, the members' loans were repaid from concert proceeds rather than paying a company debt to a bank, ultimately leaving the company insolvent. Some members of the company contended that this act constituted an unlawful distribution of company assets and that the members who authorized the loan repayments were personally liable to the company for the amounts that they caused to be paid to themselves. The District Court granted summary judgment to defendants, and on appeal, the Supreme Court affirmed. Under 35-8-604, a company may not make distributions to members if the distributions render the company unable to pay its debts, which includes a repayment of capital contributions that a member made to the company. However, in this case, the amounts advanced to the company to salvage the concert were personal loans made in the ordinary course of company business, and 35-8-504 allows a company to reimburse members for money loaned to the company, so the company had both the obligation and the right to repay the members' loans. The company had more legitimate debt than it could pay, and the decision to repay the members' loans was simply a business decision. Even though the members who authorized the payment were acting in a managerial position, they were not liable for making a legitimate business decision to pay one creditor in preference to another. Lynes v. Helm, 2007 MT 226, 339 M 120, 168 P3d 651 (2007).

Part 4
Rights and Duties of Members and Managers

35-8-405. Records and information.

Official Comments

Recognizing the informality of many limited liability companies, subsection (a) [subsection (1)] does not require a company to maintain any records. In general, a company should maintain records necessary to enable members to determine their share of profits and losses and their rights on dissociation. If inadequate records are maintained to determine those and other critical rights, a member may maintain an action for an accounting under Section 410(a) [35-8-410(1)]. Normally, a company will maintain at least records required by state or federal authorities regarding tax and other filings.

The obligation to furnish access includes the obligation to insure that all records, if any, are accessible in intelligible form. For example, a company that switches computer systems has an obligation either to convert the records from the old system or retain at least one computer capable of accessing the records from the old system.

The right to inspect and copy records maintained is not conditioned on a member or former member's purpose or motive. However, an abuse of the access and copy right may create a remedy in favor of the other members as a violation of the requesting member or former member's obligation of good faith and fair dealing. See Section 409(d) [35-8-310(4)].

Although a company is not required to maintain any records under subsection (a) [subsection (1)], it is nevertheless subject to a disclosure duty to furnish specified information under subsection (b)(1) [subsection (3)]. A company must therefore furnish to members, without demand, information reasonably needed for members to exercise their rights and duties as members. A member's exercise of these duties justifies an unqualified right of access to the company's records. The member's right to company records may not be unreasonably restricted by the operating agreement. See Section 103(b)(1) [35-8-109(3)(a)].

Compiler's Comments

1999 Amendment: Chapter 302 inserted (2)(b) concerning former members access to records; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on § 408, ULLCA.

35-8-410. Actions by members.

Official Comments

During the existence of the company, members have under this section access to the courts to resolve claims against the company and other members, leaving broad judicial discretion to fashion appropriate legal remedies. A member pursues only that member's claim against the company or another member under this section. Article 11 [35-8-1104] governs a member's derivative pursuit of a claim on behalf of the company.

A member may recover against the company and the other members under subsection (a)(3) [subsection (1)(c)] for personal injuries or damage to the member's property caused by another member. One member's negligence is therefore not imputed to bar another member's action.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 410, ULLCA.

35-8-411. Continuation of term company after expiration of specified term.

Official Comments

A term company will generally dissolve upon the expiration of its term unless either its articles are amended before the expiration of the original specified term to provide for an additional specified term or the members or managers simply continue the company as an at-will company under this section. Amendment of the articles specifying an additional term requires the unanimous consent of the members. See Section 404(c)(3) [35-8-307(3)(c)]. Therefore, any member has the right to block the amendment. Absent an amendment to the articles, a company may only be continued under subsection (b) [subsection (2)] as an at-will company. The decision to continue a term company as an at-will company does not require the unanimous consent of the members and is treated as an ordinary business matter with disputes resolved by a simple majority vote of either the members or managers. See Section 404 [35-8-307]. In that case, subsection (b) [subsection (2)] provides that the members' conduct amends or becomes part of an operating agreement to "continue" the company as an at-will company. The amendment to the operating agreement does not alter the rights of creditors who suffer detrimental reliance because the company does not liquidate after the expiration of its specified term. See Section 203(c)(2) [35-8-202(3)(b)].

Preexisting operating-agreement provisions continue to control the relationship of the members under subsection (a) [subsection (1)] except to the extent inconsistent with the rights and duties of members of an at-will company with an operating agreement containing the same provisions. However, the members could agree in advance that, if the company's business continues after the expiration of its specified term, the company continues as a company with a new specified term or that the provisions of its operating agreement survive the expiration of the specified term.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 411, ULLCA.

Part 5
Finance

35-8-501. Contributions to capital.

Official Comments

Unless otherwise provided in an operating agreement, admission of a member and the nature and valuation of a would-be member's contribution are matters requiring the consent of all of the other members. See Section 404(c)(7) [35-8-307(3)(g)]. An agreement to contribute to a company is controlled by the operating agreement and therefore may not be created or modified without amending that agreement through the unanimous consent of all the members, including the member to be bound by the new contribution terms. See 404(c)(1) [35-8-307(3)(a)].

Compiler's Comments

1999 Amendment: Chapter 302 before "property" inserted "tangible or intangible"; after "property" inserted "or other benefit to the company, including money, promissory notes"; substituted "agreements" for "a promissory note or other obligation"; at end substituted "contracts for services to be performed" for "to perform services"; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 401, ULLCA.

Law Review Articles

Lending to Limited Liability Companies: Structuring and Documenting Loans to LLCs, Nations, 113 Banking L.J. 25 (1996).

35-8-502. Liability for contribution.

Official Comments

An obligation need not be in writing to be enforceable. Given the informality of some companies, a writing requirement may frustrate reasonable expectations of members based on a clear oral agreement. Obligations may be compromised with the consent of all of the members under Section 404(c)(5) [35-8-307(3)(e)], but the compromise is generally effective only among the consenting members. Company creditors are bound by the compromise only as provided in Section 402(b) [subsection (3)(b)].

Compiler's Comments

1999 Amendment: Chapter 302 substituted (3)(b) concerning extension of credit for former text that read: "Notwithstanding the compromise, the original obligation may be enforced by a creditor of a limited liability company who extends credit or otherwise acts in reliance on the obligation after the member signs a writing that reflects the obligation and before the amendment or compromise." Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.
Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.
Source: This section is based on § 402, ULLCA.

35-8-503. Sharing of profits and losses.

Compiler's Comments

2013 Amendment: Chapter 183 inserted (2) concerning distributions of contributions and profits from a series of members; and made minor changes in style. Amendment effective October 1, 2013.

Source: This section is modeled after § 503 of the ABA Prototype Act.

35-8-504. Member's and manager's rights to payments and reimbursement.

Official Comments

The presence of a liability shield will ordinarily prevent a member or manager from incurring personal liability on behalf of the company in the ordinary course of the company's business. Where a member of a member-managed or a manager of a manager-managed company incurs such liabilities, Section 403(a) [subsection (1)] provides that the company must indemnify the member or manager where that person acted in the ordinary course of the company's business or the preservation of its property. A member or manager is therefore entitled to indemnification only if the act was within the member or manager's actual authority. A member or manager is therefore not entitled to indemnification for conduct that violates the duty of care set forth in Section 409(c) [35-8-310(3)] or for tortious conduct against a third party. Since members of a manager-managed company do not possess the apparent authority to bind the company, it would be more unusual for such a member to incur a liability for indemnification in the ordinary course of the company's business.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.
Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.
Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.
Source: Section 403, ULLCA.

Case Notes

No Breach of Duty to Company by Repayment of Loans to Members Before Payment of Company Debts: On the morning of a concert sponsored by plaintiff company, several members loaned money to the company to pay the bands so the concert could proceed. After the concert, the members' loans were repaid from concert proceeds rather than paying a company debt to a bank, ultimately leaving the company insolvent. Some members of the company contended that this act constituted an unlawful distribution of company assets and that the members who authorized the loan repayments were personally liable to the company for the amounts that they caused to be paid to themselves. The District Court granted summary judgment to defendants, and on appeal, the Supreme Court affirmed. Under 35-8-604, a company may not make distributions to members if the distributions render the company unable to pay its debts, which includes a repayment of capital contributions that a member made to the company. However, in this case, the amounts advanced to the company to salvage the concert were personal loans made in the ordinary course of company business, and this section allows a company to reimburse members for money loaned to the company, so the company had both the obligation and the right to repay the members' loans. The company had more legitimate debt than it could pay, and the decision to repay the members' loans was simply a business decision. Even though the members who authorized the payment were acting in a managerial position, they were not liable for making a legitimate business decision to pay one creditor in preference to another. Lynes v. Helm, 2007 MT 226, 339 M 120, 168 P3d 651 (2007).

Part 6
Distributions

35-8-601. Sharing of distributions.

Official Comments

Recognizing the informality of many limited liability companies, this section creates a simple default rule regarding interim distributions. Any interim distributions made must be in equal shares and approved by all members. See Section 404(c)(6) [35-8-307(3)(f)]. The rule assumes that: profits will be shared equally; some distributions will constitute a return of contributions that should be shared equally rather than a distribution of profits; and property contributors should have the right to veto any distribution that threatens their return of contributions on liquidation. In the simple case where the members make equal contributions of property or equal contributions of services, those assumptions avoid the necessity of maintaining a complex capital account or determining profits. Where some members contribute services and others property, the unanimous vote necessary to approve interim distributions protects against unwanted distributions of contributions to service contributors. Consistently, Section 408(a) [35-8-405(1)] does not require the company to maintain a separate account for each member, the Act [Title 35, ch. 8] does not contain a default rule for allocating profits and losses, and Section 806(b) [35-8-905(3)] requires that liquidating distributions to members be made in equal shares after the return of contributions not previously returned. See Comments to Section 806(b) [35-8-905(3)].

Section 405(c) [35-8-606] governs distributions declared or made when the company was solvent. Section 406 [35-8-604] governs distributions declared or made when the company is insolvent.

Compiler's Comments

1999 Amendment: Chapter 302 at beginning in exception clause deleted reference to 35-8-602; and at end substituted reference to 35-8-307(3)(f) for reference to 35-8-403. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on § 405, ULLCA.

Case Notes

Dissolution of Limited Liability Company — Member Not Entitled to Share in Distribution of Judgment Against Member: Wallace owned about 72% of a limited liability company. A dispute arose between the company and Wallace, and the company was granted a $2.5 million judgment against Wallace. The judgment was to be used to pay current company debts and liabilities, including any owed to Wallace, and the remainder was to be distributed to remaining members in proportion to their ownership. Wallace contended that as a remaining member, he was entitled to his proportional share of the distribution. The District Court held that Wallace would not be allowed to share in the distribution, and Wallace appealed. The Supreme Court affirmed. Wallace was considered a remaining member for purposes of receiving payment of company debts owed to him, but considering Wallace to be a remaining member for purposes of sharing in the distribution of the punitive award against him would have allowed Wallace to profit from his own wrong, and the District Court did not err in so concluding. Wallace v. Hayes, 2008 MT 248, 344 M 523, 191 P3d 365 (2008).

Agreement Regarding Distribution of Partnership Income Based on Partners' Respective Work — Equal Shares Not Required: Members of a partnership, including Cullinan, agreed to distribute the partnership income based on the hours that each partner worked. Under the agreement, partner Weiss was to receive compensation for working full time, and the other partners were to receive compensation for 2 hours of work a day. Weiss received monthly payments, which were deducted from the amount owed to Weiss from the partnership, and the other partners kept track of any hours above 2 hours a day that they worked in order to receive compensation. The District Court adopted this valuation method, pursuant to the agreement, and Cullinan appealed on grounds that the agreement violated this section, which requires equal shares in any partnership distribution unless the partners agree otherwise. However, Cullinan's own documentation showed that he agreed to the compensation system and did not object to the distribution offered by Weiss, so the District Court properly relied on Weiss's valuation method. Bio-Septic Systems, LLC v. Weiss, 2002 MT 318, 313 M 136, 60 P3d 943 (2002).

35-8-603. Distribution in kind.

Compiler's Comments

Source: This section is modeled after § 405 of the ULLCA.

35-8-604. Distributions.

Official Comments

This section establishes the validity of company distributions, which in turn determines the potential liability of members and managers for improper distributions under Section 407 [35-8-605]. Distributions are improper if the company is insolvent under subsection (a) [subsection (1)] at the time the distribution is measured under subsection (c) [subsection (3)]. In recognition of the informality of many limited liability companies, the solvency determination under subsection (b) [subsection (2)] may be made on the basis of a fair valuation or other method reasonable under the circumstances.

The application of the equity insolvency and balance sheet tests present special problems in the context of the purchase, redemption, or other acquisition of a company's distributional interests. Special rules establish the time of measurement of such transfers. Under Section 406(c)(1) [subsection (3)(a)], the time for measuring the effect of a distribution to purchase a distributional interest is the date of payment. The company may make payment either by transferring property or incurring a debt to transfer property in the future. In the latter case, subsection (c)(1) [subsection (3)(a)] establishes a clear rule that the legality of the distribution is tested when the debt is actually incurred, not later when the debt is actually paid. Under Section 406(e) [subsection (5)], indebtedness is not considered a liability for purposes of subsection (a) [subsection (1)] if the terms of the indebtedness itself provide that payments can be made only if and to the extent that a payment of a distribution could then be made under this section. The effect makes the holder of the indebtedness junior to all other creditors but senior to members in their capacity as members.

Compiler's Comments

Source: Section 406, ULLCA.

Case Notes

Dissolution of Limited Liability Company — Member Not Entitled to Share in Distribution of Judgment Against Member: Wallace owned about 72% of a limited liability company. A dispute arose between the company and Wallace, and the company was granted a $2.5 million judgment against Wallace. The judgment was to be used to pay current company debts and liabilities, including any owed to Wallace, and the remainder was to be distributed to remaining members in proportion to their ownership. Wallace contended that as a remaining member, he was entitled to his proportional share of the distribution. The District Court held that Wallace would not be allowed to share in the distribution, and Wallace appealed. The Supreme Court affirmed. Wallace was considered a remaining member for purposes of receiving payment of company debts owed to him, but considering Wallace to be a remaining member for purposes of sharing in the distribution of the punitive award against him would have allowed Wallace to profit from his own wrong, and the District Court did not err in so concluding. Wallace v. Hayes, 2008 MT 248, 344 M 523, 191 P3d 365 (2008).

No Breach of Duty to Company by Repayment of Loans to Members Before Payment of Company Debts: On the morning of a concert sponsored by plaintiff company, several members loaned money to the company to pay the bands so the concert could proceed. After the concert, the members' loans were repaid from concert proceeds rather than paying a company debt to a bank, ultimately leaving the company insolvent. Some members of the company contended that this act constituted an unlawful distribution of company assets and that the members who authorized the loan repayments were personally liable to the company for the amounts that they caused to be paid to themselves. The District Court granted summary judgment to defendants, and on appeal, the Supreme Court affirmed. Under this section, a company may not make distributions to members if the distributions render the company unable to pay its debts, which includes a repayment of capital contributions that a member made to the company. However, in this case, the amounts advanced to the company to salvage the concert were personal loans made in the ordinary course of company business, and 35-8-504 allows a company to reimburse members for money loaned to the company, so the company had both the obligation and the right to repay the members' loans. The company had more legitimate debt than it could pay, and the decision to repay the members' loans was simply a business decision. Even though the members who authorized the payment were acting in a managerial position, they were not liable for making a legitimate business decision to pay one creditor in preference to another. Lynes v. Helm, 2007 MT 226, 339 M 120, 168 P3d 651 (2007).

35-8-605. Liability upon wrongful distribution.

Official Comments

Whenever members or managers fail to meet the standards of conduct of Section 409 [35-8-310] and vote for or assent to an unlawful distribution, they are personally liable to the company for the portion of the distribution that exceeds the maximum amount that could have been lawfully distributed. The recovery remedy under this section extends only to the company, not the company's creditors. Under subsection (a) [subsection (1)], members and managers are not liable for an unlawful distribution provided their vote in favor of the distribution satisfies the duty of care of Section 409(c) [35-8-310(3)].

Subsection (a) [subsection (1)] creates personal liability in favor of the company against members or managers who approve an unlawful distribution for the entire amount of a distribution that could not be lawfully distributed. Subsection (b) [subsection (2)] creates personal liability against only members who knowingly received the unlawful distribution, but only in the amount measured by the portion of the actual distribution received that was not lawfully made. Members who both vote for or assent to an unlawful distribution and receive a portion or all of the distribution will be liable, at the election of the company, under either but not both subsections.

A member or manager who is liable under subsection (a) [subsection (1)] may seek contribution under subsection (c)(1) [subsection (3)(a)] from other members and managers who also voted for or assented to the same distribution and may also seek recoupment under subsection (c)(2) [subsection (3)(b)] from members who received the distribution, but only if they accepted the payments knowing they were unlawful.

The two-year statute of limitations of subsection (d) [subsection (4)] is measured from the date of the distribution. The date of the distribution is determined under Section 406(c) [35-8-604(3)].

Compiler's Comments

1999 Amendment: Chapter 302 at end of (1) substituted "perform the member's or manager's duties in compliance with 35-8-310" for "act in compliance with 35-8-604"; substituted (2) concerning knowing distribution violative of 35-8-604 for former text that read: "(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) from each other member or manager who voted for or assented to the unlawful distribution; and

(b) from each member for the amount the member received, knowing that the distribution was made in violation of 35-8-604 or the articles of organization or the operating agreement"; inserted (3) concerning impleading; inserted (4) establishing 2-year limitations period; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 407, ULLCA.

Case Notes

No Breach of Duty to Company by Repayment of Loans to Members Before Payment of Company Debts: On the morning of a concert sponsored by plaintiff company, several members loaned money to the company to pay the bands so the concert could proceed. After the concert, the members' loans were repaid from concert proceeds rather than paying a company debt to a bank, ultimately leaving the company insolvent. Some members of the company contended that this act constituted an unlawful distribution of company assets and that the members who authorized the loan repayments were personally liable to the company for the amounts that they caused to be paid to themselves. The District Court granted summary judgment to defendants, and on appeal, the Supreme Court affirmed. Under 35-8-604, a company may not make distributions to members if the distributions render the company unable to pay its debts, which includes a repayment of capital contributions that a member made to the company. However, in this case, the amounts advanced to the company to salvage the concert were personal loans made in the ordinary course of company business, and 35-8-504 allows a company to reimburse members for money loaned to the company, so the company had both the obligation and the right to repay the members' loans. The company had more legitimate debt than it could pay, and the decision to repay the members' loans was simply a business decision. Even though the members who authorized the payment were acting in a managerial position, they were not liable for making a legitimate business decision to pay one creditor in preference to another. Lynes v. Helm, 2007 MT 226, 339 M 120, 168 P3d 651 (2007).

35-8-606. Right to distribution.

Compiler's Comments

Source: This section is modeled after § 405 of the ULLCA.

Part 7
Ownership and Transfer of Property

35-8-701. Ownership of limited liability company property.

Compiler's Comments

Source: This section is modeled after § 701 of the ABA Prototype Act.

35-8-702. Transfer of real property.

Compiler's Comments

Source: This section is modeled after § 702 of the ABA Prototype Act.

35-8-703. Nature of distributional interest.

Official Comments

Members have no property interest in property owned by a limited liability company. A distributional interest is personal property and is defined under Section 101(6) [35-8-102(9)] as a member's interest in distributions only and does not include the member's broader rights to participate in management under Section 404 [35-8-307] and to inspect company records under Section 408 [35-8-405].

Under Section 405(a) [35-8-601], distributions are allocated in equal shares unless otherwise provided in an operating agreement. Whenever it is desirable to allocate distributions in proportion to contributions rather than per capita, certification may be useful to reduce valuation issues. New and important Internal Revenue Service announcements clarify that certification of a limited liability company will not cause it to be taxed like a corporation.

Compiler's Comments

1999 Amendment — Code Commissioner Correction: Chapter 302 substituted current text concerning the nature of a distributional interest for former text that read: "A membership interest is personal property." In (2) and (3) the code commissioner, pursuant to the authority contained in sec. 99, Ch. 51, L. 1999, substituted references to 35-8-707 for references to "[section 25]", amending 35-8-605. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 501, ULLCA.

35-8-705. Rights of judgment creditor.

Official Comments

A charging order is the only remedy by which a judgment creditor of a member or a member's transferee may reach the distributional interest of a member or member's transferee. Under Section 503(e) [35-8-707(6)], the distributional interest of a member or transferee is limited to the member's right to receive distributions from the company and to seek judicial liquidation of the company.

Compiler's Comments

1999 Amendment: Chapter 302 in three places in (1) substituted "distributional interest" for "membership interest"; inserted (2) concerning a receiver; inserted (3) concerning a charging order as a lien; inserted (4) concerning redemption of distributional interest; inserted (5) concerning exclusive remedy; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 504, ULLCA.

35-8-707. Transfer of distributional interest — rights of transferee.

Official Comments

Under Sections 501(b) [35-8-703(2)] and 502 [subsection (1)], the only interest a member may freely transfer is that member's distributional interest. A member's transfer of all of a distributional interest constitutes an event of dissociation. See Section 601(3) [35-8-803(3)]. A transfer of less than all of a member's distributional interest is not an event of dissociation. A member ceases to be a member upon the transfer of all that member's distributional interest and that transfer is also an event of dissociation under Section 601(3) [35-8-803(3)]. Relating the event of dissociation to the member's transfer of all of the member's distributional interest avoids the need for the company to track potential future dissociation events associated with a member no longer financially interested in the company. Also, all the remaining members may expel a member upon the transfer of "substantially all" the member's distributional interest. The expulsion is an event of dissociation under Section 601(5)(ii) [38-8-803(5)(b)].

The only interest a member may freely transfer is the member's distributional interest. A transferee may acquire the remaining rights of a member only by being admitted as a member of the company by all of the remaining members. New and important Internal Revenue Service announcements clarify that the transferability of membership interests of a limited liability company in excess of these default rules will not cause it to be taxed like a corporation. In many cases a limited liability company will be organized and operated with only a few members. These default rules were chosen in the interest of preserving the right of existing members in such companies to determine whether a transferee will become a member.

A transferee not admitted as a member is not entitled to participate in management, require access to information, or inspect or copy company records. The only rights of a transferee are to receive the distributions the transferor would otherwise be entitled, receive a limited statement of account, and seek a judicial dissolution under Section 801(a)(5) [35-8-902(2)(a)].

Subsection (e) [subsection (6)] sets forth the rights of a transferee of an existing member. Although the rights of a dissociated member to participate in the future management of the company parallel the rights of a transferee, a dissociated member retains additional rights that accrued from that person's membership such as the right to enforce Article 7 [35-8-808, 35-8-809, 35-8-811, and 35-8-812] purchase rights. See and compare Sections 603(b)(1) [35-8-805(2)(a)] and 801(a)(4) [35-8-902(1)] and Comments.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Sections 502 and 503, ULLCA.

Part 8
Admission and Withdrawal of Members

35-8-803. Events causing member's dissociation.

Official Comments

The term "dissociation" refers to the change in the relationships among the dissociated member, the company and the other members caused by a member's ceasing to be associated in the carrying on of the company's business. Member dissociation from either an at-will or term company, whether member- or manager-managed is not an event of dissolution of the company unless otherwise specified in an operating agreement. See Section 801(a)(1) [35-8-901(1)(a)]. However, member dissociation will generally trigger the obligation of the company to purchase the dissociated member's interest under Article 7 [35-8-808, 35-8-809, 35-8-811, and 35-8-812].

A member may be expelled from the company under paragraph (5)(ii) [subsection (5)(b)] by the unanimous vote of the other members upon a transfer of "substantially all" of the member's distributional interest other than for a transfer as security for a loan. A transfer of "all" of the member's distributional interest is an event of dissociation under paragraph (3) [subsection (3)].

Although a member is dissociated upon death, the effect of the dissociation where the company does not dissolve depends upon whether the company is at-will or term. Only the decedent's distributional interest transfers to the decedent's estate which does not acquire the decedent member's management rights. See Section 603(b)(1) [35-8-805(2)(a)]. Unless otherwise agreed, if the company was at-will, the estate's distributional interest must be purchased by the company at fair value determined at the date of death. However, if a term company, the estate and its transferees continue only as the owner of the distributional interest with no management rights until the expiration of the specified term that existed on the date of death. At the expiration of that term, the company must purchase the interest of a dissociated member if the company continues for an additional term by amending its articles or simply continues as an at-will company. See Sections 411 [35-8-411] and 701(a)(2) [35-8-808(1)(b)] and Comments. Before that time, the estate and its transferees have the right to make application for a judicial dissolution of the company under Section 801(b)(5) [35-8-902(2)(a)] as successors in interest to a dissociated member. See Comments to Sections 801, 411, and 701 [35-8-901, 35-8-902, 35-8-411, and 35-8-808]. Where the members have allocated management rights on the basis of contributions rather than simply the number of members, a member's death will result in a transfer of management rights to the remaining members on a proportionate basis. This transfer of rights may be avoided by a provision in an operating agreement extending the Section 701(a)(1) [35-8-808(1)(a)] at-will purchase right to a decedent member of a term company.

Compiler's Comments

2013 Amendment: Chapter 183 inserted (2) concerning dissociation with respect to a series of members; and made minor changes in style. Amendment effective October 1, 2013.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 601, ULLCA.

Case Notes

Valuation of Estate's Interest in Limited Liability Company Upheld — Award of Interest, Attorney Fees, and Costs Reversed: The District Court properly valued the estate's interest in a limited liability company at the date of trial, rather than at the date of a member's death, because the deceased member's personal representative and the surviving member agreed to continue operating the business instead of dissolving it pursuant to the business's operating agreement. The District Court improperly determined the interest rate pursuant to 25-9-205 because the operating agreement contained a specific provision regarding interest and improperly relied on an indemnification clause contained in the operating agreement in awarding unsupported attorney fees. In addition, the District Court erred in awarding costs to the estate because the estate filed its request for costs 4 months after the deadline passed. Pastimes, LLC v. Clavin, 2012 MT 29, 364 Mont. 109, 274 P.3d 714.

35-8-804. Member's power to dissociate — wrongful dissociation.

Official Comments

A member has the power to withdraw from both an at-will company and a term company although the effects of the withdrawal are remarkably different. See Comments to Section 601 [35-8-803]. At a minimum, the exercise of a power to withdraw enables members to terminate their continuing duties of loyalty and care. See Section 603(b)(2) to (3) [35-8-805(2)(b) and (2)(c)].

A member's power to withdraw by express will may be eliminated by an operating agreement. New and important Internal Revenue Service announcements clarify that alteration of a member's power to withdraw will not cause the limited liability company to be taxed like a corporation. An operating agreement may eliminate a member's power to withdraw by express will to promote the business continuity of an at-will company by removing member's right to force the company to purchase the member's distributional interest. See Section 701(a)(1) [35-8-808(1)(a)]. However, such a member retains the ability to seek a judicial dissolution of the company. See Section 801(a)(4) [35-8-902(1)].

If a member's power to withdraw by express will is not eliminated in an operating agreement, the withdrawal may nevertheless be made wrongful under subsection (b) [subsection (2)]. All dissociations, including withdrawal by express will, may be made wrongful under subsection (b)(1) [subsection (2)(a)] in both an at-will and term company by the inclusion of a provision in an operating agreement. Even where an operating agreement does not eliminate the power to withdraw by express will or make any dissociation wrongful, the dissociation of a member of a term company for the reasons specified under subsection (b)(2) [subsection (2)(b)] is wrongful. The member is liable to the company and other members for damages caused by a wrongful dissociation under subsection (c) [subsection (3)] and, under subsection (d) [subsection (4)], the damages may be offset against all distributions otherwise due the member after the dissociation. Section 701(f) [35-8-808(6)] provides a similar rule permitting damages for wrongful dissociation to be offset against any company purchase of the member's distributional interest.

Compiler's Comments

2013 Amendment: Chapter 183 in (1) substituted "35-8-803(1)(a)" for "35-8-803(1)"; and in (2)(b)(ii) substituted "35-8-803(1)(f)" for "35-8-803(6)". Amendment effective October 1, 2013.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 602, ULLCA.

35-8-805. Effect of member's dissociation.

Official Comments

Member dissociation is not an event of dissolution of a company unless otherwise specified in an operating agreement. See Section 801(a)(1) [35-8-901(1)(a)]. Dissociation from an at-will company that does not dissolve the company causes the dissociated member's distributional interest to be immediately purchased under Article 7 [35-8-808, 35-8-809, 35-8-811, and 35-8-812]. See Comments to Sections 602 [35-8-804] and 603 [this section]. Dissociation from a term company that does not dissolve the company does not cause the dissociated member's distributional interest to be purchased under Article 7 [35-8-808, 35-8-809, 35-8-811, and 35-8-812] until the expiration of the specified term that existed on the date of dissociation.

Subsection (b)(1) [subsection (2)(a)] provides that a dissociated member forfeits the right to participate in the future conduct of the company's business. Dissociation does not however forfeit that member's right to enforce the Article 7 [35-8-808, 35-8-809, 35-8-811, and 35-8-812] rights that accrue by reason of the dissociation. Similarly, where dissociation occurs by death, the decedent member's successors in interest may enforce that member's Article 7 [35-8-808, 35-8-809, 35-8-811, and 35-8-812] rights. See and compare Comments to Section 503(e) [35-8-707(5)].

Dissociation terminates the member's right to participate in management, including the member's actual authority to act for the company under Section 301 [35-8-301], and begins the two-year period after which a member's apparent authority conclusively ends. See Comments to Section 703 [35-8-811]. Dissociation also terminates a member's continuing duties of loyalty and care, except with regard to continuing transactions, to the company and other members unless the member participates in winding up the company's business. See Comments to Section 409 [35-8-310].

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 603, ULLCA.

35-8-808. Company purchase of distributional interest.

Official Comments

This section sets forth default rules regarding an otherwise mandatory company purchase of a distributional interest. Even though a dissociated member's rights to participate in the future management of the company are equivalent to those of a transferee of a member, the dissociation does not forfeit that member's right to enforce the Article 7 [35-8-808, 35-8-809, 35-8-811, and 35-8-812] purchase right. Similarly, if the dissociation occurs by reason of death, the decedent member's successors in interest may enforce the Article 7 [35-8-808, 35-8-809, 35-8-811, and 35-8-812] rights. See Comments to Sections 503(e) [35-8-707(5)] and 603(b)(1) [35-8-805(2)(a)].

An at-will company must purchase a dissociated member's distributional interest under subsection (a)(1) [subsection (1)(a)] when that member's dissociation does not result in a dissolution of the company under Section 801(a)(1) [35-8-901(1)(a)]. The purchase price is equal to the fair value of the interest determined as of the date of dissociation. Any damages for wrongful dissociation must be offset against the purchase price.

Dissociation from a term company does not require an immediate purchase of the member's interest but the operating agreement may specify that dissociation is an event of dissolution. See Section 801(a)(1) [35-8-901(1)(a)]. A term company must only purchase the dissociated member's distributional interest under subsection (a)(2) [subsection (1)(b)] on the expiration of the specified term that existed on the date of the member's dissociation. The purchase price is equal to the fair value of the interest determined as of the date of the expiration of that specified term. Any damages for wrongful dissociation must be offset against the purchase price.

The valuation dates differ between subsections (a)(1) and (a)(2) [subsections (1)(a) and (1)(b)] purchases. The former is valued on the date of member dissociation whereas the latter is valued on the date of the expiration of the specified term that existed on the date of dissociation. A subsection (a)(2) [subsection (1)(b)] dissociated member therefore assumes the risk of loss between the date of dissociation and the expiration of the then stated specified term. See Comments to Section 801 (dissociated member may file application to dissolve company under Section 801(a)(4) [35-8-902(1)]) [35-8-901 and 35-8-902].

The default valuation standard is fair value. See Comments to Section 702 [35-8-809]. An operating agreement may fix a method or formula for determining the purchase price and the terms of payment. The purchase right may be modified. For example, an operating agreement may eliminate a member's power to withdraw from an at-will company which narrows the dissociation events contemplated under subsection (a)(1) [subsection (1)(b)]. See Comments to Section 602(a) [35-8-804(1)]. However, a provision in an operating agreement providing for complete forfeiture of the purchase right may be unenforceable where the power to dissociate has not also been eliminated. See Section 104(a) [35-8-110(1)].

The company must deliver a purchase offer to the dissociated member within 30 days after the date determined under subsection (a) [subsection (1)]. The offer must be accompanied by information designed to enable the dissociated member to evaluate the fairness of the offer. The subsection (b)(3) [subsection (2)(c)] explanation of how the offer price was calculated need not be elaborate. For example, a mere statement of the basis of the calculation, such as "book value," may be sufficient.

The company and the dissociated member must reach an agreement on the purchase price and terms within 120 days after the date determined under subsection (a) [subsection (1)]. Otherwise, the dissociated member may file suit within another 120 days to enforce the purchase under subsection (d) [subsection (4)]. The court will then determine the fair value and terms of purchase under subsection (e) [subsection 5]. See Section 702 [35-8-809]. The member's lawsuit is not available under subsection (c) [subsection (3)] if the parties have previously agreed to price and terms in an operating agreement.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 701, ULLCA.

35-8-809. Court action to determine fair value of distributional interest.

Official Comments

The default valuation standard is fair value. Under this broad standard, a court is free to determine the fair value of a distributional interest on a fair market, liquidation, or any other method deemed appropriate under the circumstances. A fair market value standard is not used because it is too narrow, often inappropriate, and assumes a fact not contemplated by this section — a willing buyer and a willing seller.

The court has discretion under subsection (a)(2) [subsection (1)(b)] to include in its order any conditions the court deems necessary to safeguard the interests of the company and the dissociated member or transferee. The discretion may be based on the financial and other needs of the parties.

If the purchase is not consummated or the purchaser defaults, the dissociated member or transferee may make application for dissolution of the company under subsection (c) [subsection (3)]. The court may deny the petition for good cause but the proceeding affords the company an opportunity to be heard on the matter and avoid dissolution. See Comments to Section 801(a)(4) [35-8-902(1)].

The power of the court to award all costs and attorney's fees incurred in the suit under subsection (d) [subsection (4)] is an incentive for both parties to act in good faith. See Section 701(c) [35-8-808(3)].

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 702, ULLCA.

Case Notes

Valuation of Estate's Interest in Limited Liability Company Upheld — Award of Interest, Attorney Fees, and Costs Reversed: The District Court properly valued the estate's interest in a limited liability company at the date of trial, rather than at the date of a member's death, because the deceased member's personal representative and the surviving member agreed to continue operating the business instead of dissolving it pursuant to the business's operating agreement. The District Court improperly determined the interest rate pursuant to 25-9-205 because the operating agreement contained a specific provision regarding interest and improperly relied on an indemnification clause contained in the operating agreement in awarding unsupported attorney fees. In addition, the District Court erred in awarding costs to the estate because the estate filed its request for costs 4 months after the deadline passed. Pastimes, LLC v. Clavin, 2012 MT 29, 364 Mont. 109, 274 P.3d 714.

Responsibility for Prototype Correctly Assigned to Partner Who Assumed Ownership: In winding up a partnership, the District Court determined that an experimental prototype belonged to partner Cullinan and assigned to Cullinan the responsibility of maintaining the unit. Cullinan appealed, but the Supreme Court affirmed. Cullinan assumed ownership of the device after requesting the unit and paid for its storage. Weiss, the other interested partner, did not object to Cullinan's ownership. Absent an objection from Weiss, the District Court simply granted Cullinan's request for ownership of the prototype, and Cullinan could not then complain of the responsibility attached to the property interest in the unit. Bio-Septic Systems, LLC v. Weiss, 2002 MT 318, 313 M 136, 60 P3d 943 (2002).

Sufficient Evidence to Warrant Award of Damages and Costs for Interference in Winding Up of Partnership: The District Court awarded defendant Weiss damages and legal costs after finding that Cullinan, one of the partners in a limited liability company, acted arbitrarily and wrongfully interfered with the orderly winding up and dissolution of the company. The partner appealed, but the Supreme Court affirmed. Under this section, expenses and attorney fees are payable if a party to the proceeding did not act in good faith. The District Court found that Cullinan denied and attempted to renegotiate an exclusive marketing agreement, attempted to prevent payment of partnership debts, obstructed another partner's attempts to obtain financing, and attempted to terminate a partnership escrow arrangement. These actions constituted sufficient evidence of arbitrary and vexatious conduct by Cullinan to warrant the award of damages and fees. The District Court also correctly determined that Cullinan failed to prove that Weiss had breached any fiduciary obligations owed to the company or to Cullinan as a member of the company. Bio-Septic Systems, LLC v. Weiss, 2002 MT 318, 313 M 136, 60 P3d 943 (2002). See also DeTienne v. Sandrock, 2018 MT 269, 393 Mont. 249, 431 P.3d 12, in which the defendant fraudulently terminated a lease for a joint business venture and was ordered to pay attorney fees of the proceedings, including on appeal.

35-8-811. Dissociated member's power to bind limited liability company.

Official Comments

Member dissociation will not dissolve the company unless otherwise specified in an operating agreement. See Section 801(a)(1) [35-8-901(1)(a)]. A dissociated member of a member-managed company does not have actual authority to act for the company. See Section 603(b)(1) [35-8-805(2)(a)]. Under Section 301(a) [35-8-301(1)], a dissociated member of a member-managed company has apparent authority to bind the company in ordinary course transactions except as to persons who knew or had notice of the dissociation. This section modifies that rule by requiring the person to show reasonable reliance on the member's status as a member provided a Section 704 [35-8-812] statement has not been filed within the previous 90 days. See also Section 804 (power to bind after dissolution) [35-8-904].

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 703, ULLCA.

35-8-812. Statement of dissociation.

Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 704, ULLCA.

Part 9
Dissolution

35-8-901. Dissolution.

Official Comments

The dissolution rules of this section are mostly default rules and may be modified by an operating agreement. However, an operating agreement may not modify or eliminate the dissolution events specified in subsection (a)(3) (illegal business) [35-8-901(1)(c)] or subsection (a)(4) (member application) [35-8-902(1)]. See Section 103(b)(6) [35-8-109(3)(f)].

The relationship between member dissociation and company dissolution is set forth under subsection (a)(1) [35-8-901(1)(a)]. Unless member dissociation is specified as an event of dissolution in the operating agreement, such dissociation does not dissolve the company. New and important Internal Revenue Service announcements clarify that the failure of member dissociation to cause or threaten dissolution of a limited liability company will not cause the company to be taxed like a corporation.

A member or dissociated member whose interest is not required to be purchased by the company under Section 701 [35-8-808] may make application under subsection (a)(4) [35-8-902(1)] for the involuntary dissolution of both an at-will company and a term company. A transferee may make application under subsection (a)(5) [35-8-902(2)]. A transferee's application right, but not that of a member or dissociated member, may be modified by an operating agreement. See Section 103(b)(6) [35-8-109(3)(f)]. A dissociated member is not treated as a transferee for purposes of an application under subsections (a)(4) and (a)(5) [35-8-902 (1) and (2)]. See Section 603(b)(1) [35-8-805(2)(a)]. For example, this affords reasonable protection to a dissociated member of a term company to make application under subsection (a)(4) [35-8-902(1)] before the expiration of the term that existed at the time of dissociation. For purposes of a subsection (a)(4) [35-8-902(1)] application, a dissociated member includes a successor in interest, e.g., surviving spouse. See Comments to Section 601 [35-8-803].

The liability shield continues in effect for the winding up period because the legal existence of the company continues under subsection (a) [35-8-901(2)]. The company is terminated on the filing of articles of termination. See Section 805 [35-8-906].

Compiler's Comments

2013 Amendment: Chapter 183 inserted (4) and (5) concerning dissolution with respect to a series of members. Amendment effective October 1, 2013.

1999 Amendment: Chapter 302 substituted (1)(b) and (1)(c) concerning consent and unlawful events for former (2)and (3) that read: "(2) the written consent of all members;

(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement"; inserted (1)(d) concerning expiration of term; inserted (2) concerning winding up; inserted (3) concerning waiver of winding up; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on §§ 801 and 802, ULLCA.

Case Notes

Judicial Dissolution of LLC Proper During Summary Judgment— Uncontested Facts Sufficient: The District Court relied on four factors in 35-8-901 and ordered judicial dissolution of a limited liability company (LLC) through a summary judgment proceeding. On appeal the respondents challenged the petitioners' motives for seeking dissolution and argued that the petitioners failed to pay their initial contribution to the LLC. The Supreme Court affirmed the District Court and determined that the issues that were raised by the respondents were immaterial issues to raise an issue of fact. In summary judgment, material facts are identified by looking at the substantive law governing the claim, and there were enough uncontested material facts for the District Court to find grounds for dissolution pursuant to 35-8-901. Gordon v. Kuzara, 2012 MT 206, 366 Mont. 243, 286 P.3d 895.

Valuation of Estate's Interest in Limited Liability Company Upheld — Award of Interest, Attorney Fees, and Costs Reversed: The District Court properly valued the estate's interest in a limited liability company at the date of trial, rather than at the date of a member's death, because the deceased member's personal representative and the surviving member agreed to continue operating the business instead of dissolving it pursuant to the business's operating agreement.

The District Court improperly determined the interest rate pursuant to 25-9-205 because the operating agreement contained a specific provision regarding interest and improperly relied on an indemnification clause contained in the operating agreement in awarding unsupported attorney fees. In addition, the District Court erred in awarding costs to the estate because the estate filed its request for costs 4 months after the deadline passed. Pastimes, LLC v. Clavin, 2012 MT 29, 364 Mont. 109, 274 P.3d 714.

35-8-902. Judicial dissolution.

Official Comments

In the case of applications under subsections (a)(4) and (a)(5) [35-8-902(1) and (2)], the applicant has the burden of proving either the existence of one or more of the circumstances listed under subsection (a)(4) [35-8-902(1)] or that it is equitable to wind up the company's business under subsection (a)(5) [35-8-902(2)]. Proof of the existence of one or more of the circumstances in subsection (a)(4) [35-8-902(1)], may be the basis of a subsection (a)(5) [35-8-902(2)] application. Even where the burden of proof is met, the court has the discretion to order relief other than the dissolution of the company. Examples include an accounting, a declaratory judgment, a distribution, the purchase of the distributional interest of the applicant or another member, or the appointment of a receiver. See Section 410 [35-8-410].

A court has the discretion to dissolve a company under subsection (a)(4)(i) [35-8-902(1)(a)] when the company has a very poor financial record that is not likely to improve. In this instance, dissolution is an alternative to placing the company in bankruptcy. A court may dissolve a company under subsections (a)(4)(ii), (a)(4)(iii), and (a)(4)(iv) [35-8-902(1)(b) through (1)(d)] for serious and protracted misconduct by one or more members. Subsection (a)(4)(v) [35-8-902(1)(e)] provides a specific remedy for an improper squeeze-out of a member.

In determining whether and what type of relief to order under subsections (a)(4) and (a)(5) [35-8-902(1) and (2)] involuntary dissolution suits, a court should take into account other rights and remedies of the applicant. For example, a court should not grant involuntary dissolution of an at-will company if the applicant member has the right to dissociate and force the company to purchase that member's distributional interest under Sections 701 [35-8-808] and 702 [35-8-809]. In other cases, involuntary dissolution or some other remedy such as a buy-out might be appropriate where, for example, one or more members have (i) engaged in fraudulent or unconscionable conduct, (ii) improperly expelled a member seeking an unfair advantage of a provision in an operating agreement that provides for a significantly lower price on expulsion than would be payable in the event of voluntary dissociation, or (iii) engaged in serious misconduct and the applicant member is a member of a term company and would not have a right to have the company purchase that member's distributional interest upon dissociation until the expiration of the company's specified term.

Compiler's Comments

2013 Amendment: Chapter 183 inserted (3) authorizing a district court to decree only the termination of a series of members and not the dissolution of the limited liability company. Amendment effective October 1, 2013.

1999 Amendment: Chapter 302 in (1) near beginning after "member" inserted "or a dissociated member"; inserted (1)(a) concerning economic purpose; inserted (1)(b) concerning member conduct; substituted (1)(c) concerning practicality for former text that read: "it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement"; inserted (1)(d) concerning purchase of distributional interest; inserted (1)(e) concerning illegal action; inserted (2) concerning court determination of equitable wind up; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on a portion of § 801, ULLCA.

Case Notes

Judicial Dissolution of LLC Proper During Summary Judgment — Uncontested Facts Sufficient: The District Court relied on four factors in 35-8-901 and ordered judicial dissolution of a limited liability company (LLC) through a summary judgment proceeding. On appeal the respondents challenged the petitioners' motives for seeking dissolution and argued that the petitioners failed to pay their initial contribution to the LLC. The Supreme Court affirmed the District Court and determined that the issues that were raised by the respondents were immaterial issues to raise an issue of fact. In summary judgment, material facts are identified by looking at the substantive law governing the claim, and there were enough uncontested material facts for the District Court to find grounds for dissolution pursuant to 35-8-901. Gordon v. Kuzara, 2012 MT 206, 366 Mont. 243, 286 P.3d 895.

Motion to Amend Answer Properly Denied — Counterclaims Subject to Arbitration Agreement: The District Court denied the respondents' motion for leave to file an amended answer under Rule 15(a), M.R.Civ.P. (Title 25, ch. 20), that would have added tort counterclaims to a limited liability company (LLC) dissolution proceeding. In denying the motion, the District Court reasoned that the LLC operating agreement required binding arbitration to settle disputes of this nature and that allowing the counterclaims would result in additional claims, protracted discovery, and additional delay while causing prejudice and detriment to the petitioners. On appeal, the Supreme Court affirmed the District Court and determined that the counterclaims would have been legally insufficient and futile based on the arbitration clause in the operating agreement. Gordon v. Kuzara, 2012 MT 206, 366 Mont. 243, 286 P.3d 895, distinguishing Gordon v. Kuzara, 2010 MT 275, 358 Mont. 432, 245 P.3d 37.

Dissolution of Limited Liability Company Not Subject to Arbitration Agreement: The Gordons filed an application with the District Court for judicial dissolution of a limited liability company (LLC) pursuant to this section. Kuzara, a managing member of the LLC, claimed that dissolution was subject to arbitration because the operating agreement of the LLC contained an arbitration clause. Citing Georgia Rehab. Ctr., Inc. v. Newnan Hosp., 658 S.E.2d 737 (Ga. 2008) and River Links at Deer Creek, LLC v. Melz, 108 S.W.3d 855 (Tenn. App. 2002), the Montana Supreme Court held that since the parties had not agreed in the operating agreement to subject the winding up of the affairs of the LLC to arbitration, the Supreme Court would not require it. The fact that the District Court looked to provisions of the operating agreement in order to determine whether the winding up of the affairs of the LLC was appropriate did not change the nature of the Gordons' petition as one seeking to end the affairs of the LLC pursuant to statute. Gordon v. Kuzara, 2010 MT 275, 358 Mont. 432, 245 P.3d 37, distinguished in Gordon v. Kuzara, 2012 MT 206, 366 Mont. 243, 286 P.3d 895.

Dissolution of Limited Liability Company — Member Not Entitled to Share in Distribution of Judgment Against Member: Wallace owned about 72% of a limited liability company. A dispute arose between the company and Wallace, and the company was granted a $2.5 million judgment against Wallace. The judgment was to be used to pay current company debts and liabilities, including any owed to Wallace, and the remainder was to be distributed to remaining members in proportion to their ownership. Wallace contended that as a remaining member, he was entitled to his proportional share of the distribution. The District Court held that Wallace would not be allowed to share in the distribution, and Wallace appealed. The Supreme Court affirmed. Wallace was considered a remaining member for purposes of receiving payment of company debts owed to him, but considering Wallace to be a remaining member for purposes of sharing in the distribution of the punitive award against him would have allowed Wallace to profit from his own wrong, and the District Court did not err in so concluding. Wallace v. Hayes, 2008 MT 248, 344 M 523, 191 P3d 365 (2008).

35-8-903. Winding up.

Compiler's Comments

Source: This section is modeled after § 803 of the ULLCA.

Case Notes

Breach of Contract Between Defendant and Involuntarily Dissolved LLC — 6 Years to Wind Up Business Not Reasonable — Summary Judgment in Favor of Defendant Proper: In 2003, the plaintiff created a limited liability company (LLC), of which he was the only listed member and agent. The plaintiff and his wife later leased property to the LLC, which in turn subleased it to the defendant for mining. Approximately 6 years later, the plaintiff, both individually and as an agent of the LLC, filed a complaint against the defendant seeking unpaid royalties. During litigation, the plaintiff learned that the LLC had been involuntarily dissolved 6 years earlier after failing to file an annual report. The plaintiff then created another LLC with the same name as the dissolved LLC. Nevertheless, the District Court determined that the plaintiff lacked standing to sue on behalf of the dissolved LLC and granted the defendant summary judgment. On appeal, the Supreme Court affirmed, agreeing that 6 years exceeded a reasonable amount of time for the LLC to wind up its business affairs. The Supreme Court further concurred that neither the plaintiff individually nor the new LLC had standing to sue the defendant since neither was a party to the sublease. Deschamps v. Farwest Rock, Ltd., 2020 MT 270, 402 Mont. 15, 474 P.3d 1282.

35-8-904. Agency power and liability of members or managers after dissolution.

Official Comments

After dissolution, members and managers continue to have the authority to bind the company that they had prior to dissolution provided that the third party did not have notice of the dissolution. See Section 102(b) (notice defined) [35-8-219(2)]. Otherwise, they have only the authority appropriate for winding up the company's business. See Section 703 (agency power of member after dissociation) [35-8-811].

Compiler's Comments

1999 Amendment: Chapter 302 in (2) substituted "termination" for "dissolution"; and inserted (6) concerning liability for inappropriate act. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on § 804, ULLCA.

35-8-905. Distribution of assets.

Compiler's Comments

1999 Amendment: Chapter 302 at end of (1) and (2) substituted "35-8-605" for "35-8-602 or 35-8-603"; in (3) after "provided" inserted "in writing" and before "operating" inserted "written"; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on § 806, ULLCA.

Case Notes

Dissolution of Limited Liability Company — Member Not Entitled to Share in Distribution of Judgment Against Member: Wallace owned about 72% of a limited liability company. A dispute arose between the company and Wallace, and the company was granted a $2.5 million judgment against Wallace. The judgment was to be used to pay current company debts and liabilities, including any owed to Wallace, and the remainder was to be distributed to remaining members in proportion to their ownership. Wallace contended that as a remaining member, he was entitled to his proportional share of the distribution. The District Court held that Wallace would not be allowed to share in the distribution, and Wallace appealed. The Supreme Court affirmed. Wallace was considered a remaining member for purposes of receiving payment of company debts owed to him, but considering Wallace to be a remaining member for purposes of sharing in the distribution of the punitive award against him would have allowed Wallace to profit from his own wrong, and the District Court did not err in so concluding. Wallace v. Hayes, 2008 MT 248, 344 M 523, 191 P3d 365 (2008).

35-8-906. Articles of termination.

Official Comments

The termination of legal existence also terminates the company's liability shield. See Comments to Section 802 (liability shield continues in effect during winding up) [35-8-901(2) and (3)]. It also ends the company's responsibility to file an annual report. See Section 211 [35-8-208].

Compiler's Comments

1999 Amendment: Chapter 302 deleted former introductory clause that read: "Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth"; inserted (1) concerning termination of existence; deleted former (2) that read: "(2) the date of filing of its articles of organization and all amendments to the articles"; in (1)(b) and (1)(c) substituted "termination" for "dissolution"; deleted former (5) that read: "(5) any other information that the members or managers filing the articles determine necessary"; in (1)(d) after "dissolution" inserted "or termination"; inserted (1)(f) concerning date; inserted (1)(g) concerning termination of legal existence; inserted (2) concerning filing of articles of termination; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 805, ULLCA.

35-8-908. Known claims against dissolved or terminated limited liability companies.

Official Comments

A known claim will be barred when the company provides written notice to a claimant that a claim must be filed with the company no later than at least 120 days after receipt of the written notice and the claimant fails to file the claim. If the claim is timely received but is rejected by the company, the claim is nevertheless barred unless the claimant files suit to enforce the claim within 90 days after the receipt of the notice of rejection. A claim described in subsection (d) [subsection (4)] is not a "known" claim and is governed by Section 808 [35-8-909]. This section does not extend any other applicable statutes of limitation. See Section 104 [35-8-110]. Depending on the management of the company, members or managers must discharge or make provision for discharging all of the company's known liabilities before distributing the remaining assets to the members. See Sections 806(a) [35-8-905(1)], 406 [35-8-604], and 407 [35-8-605].

Compiler's Comments

1999 Amendment: Chapter 302 throughout section inserted references to termination; near middle of (1) after "by" deleted "filing articles of dissolution pursuant to 35-8-906 and"; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: Section 807, ULLCA.

35-8-909. Unknown claims against dissolved or terminated limited liability companies.

Official Comments

An unknown claim will be barred when the company publishes notice requesting claimants to file claims with the company and stating that claims will be barred unless the claimant files suit to enforce the claim within five years after the date of publication. The procedure also bars known claims where the claimant either did not receive written notice described in Section 807 [35-8-908] or received notice, mailed a claim, but the company did not act on the claim.

Depending on the management of the company, members or managers must discharge or make provision for discharging all of the company's known liabilities before distributing the remaining assets to the members. See Comment to Section 807 [35-8-908]. This section does not contemplate that a company will postpone member distributions until all unknown claims are barred under this section. In appropriate cases, the company may purchase insurance or set aside funds permitting a distribution of the remaining assets. Where winding up distributions have been made to members, subsection (d)(2) [subsection (5)(b)] authorizes recovery against those members. However, a claimant's recovery against a member is limited to the lesser of the member's proportionate share of the claim or the amount received in the distribution. This section does not extend any other applicable statutes of limitation. See Section 104 [35-8-110].

Compiler's Comments

1999 Amendment: Chapter 302 in (1) in two places after "dissolution" inserted "or termination" and near beginning after "35-8-908" inserted "and subsections (2) through (5) of this section"; substituted (2) concerning notice of dissolution for former text that read: "(2) A claim may be enforced under 35-8-908 or this section:

(a) against the dissolved limited liability company, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company, to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member"; substituted (3) concerning content of published notice for former text that read: "(3) Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law"; inserted (4) concerning 5-year limit on actions; inserted (5) concerning enforcement of claims; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on § 808, ULLCA.

Case Notes

No Evidence of Pending Litigation Against Limited Liability Company to Preclude Dissolution: Plaintiff asserted that the District Court erred by ordering the dissolution of a limited liability company while unresolved patent infringement claims against the company were still outstanding. However, plaintiff failed to present any evidence in the record of pending litigation against the company, and the Supreme Court declined to depart from the record. Plaintiff failed to present a credible challenge to dissolution of the company, and the Supreme Court affirmed the dissolution order. Wallace v. Hayes, 2008 MT 248, 344 M 523, 191 P3d 365 (2008).

35-8-912. Reinstatement following administrative dissolution.

Compiler's Comments

2011 Amendment — Amendment Not Codified: Chapter 355 substituted current text for former section that read: "(1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103;

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and

(e) include all annual reports not yet filed with the secretary of state.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred." Amendment effective October 1, 2011.

Because of the temporary nature of the changes made by sec. 1, Ch. 355, L. 2011, the Code Commissioner did not codify the amendment to this section that was effective May 6, 2011, and terminated September 30, 2011. The temporary amendment was as follows: in (1)(d) after "paid" inserted "unless a limited liability company has only one member and has not elected to be taxed as a corporation".

The amendment to this section made by sec. 18, Ch. 26, L. 2011, was rendered void by sec. 3, Ch. 355, L. 2011, a coordination section.

2003 Amendment: Chapter 75 in (1) at end of second sentence deleted "and one copy of the application"; inserted (1)(e) concerning annual reports not yet filed; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 811, ULLCA.

Case Notes

Breach of Contract Between Defendant and Involuntarily Dissolved LLC — 6 Years to Wind Up Business Not Reasonable — Summary Judgment in Favor of Defendant Proper: In 2003, the plaintiff created a limited liability company (LLC), of which he was the only listed member and agent. The plaintiff and his wife later leased property to the LLC, which in turn subleased it to the defendant for mining. Approximately 6 years later, the plaintiff, both individually and as an agent of the LLC, filed a complaint against the defendant seeking unpaid royalties. During litigation, the plaintiff learned that the LLC had been involuntarily dissolved 6 years earlier after failing to file an annual report. The plaintiff then created another LLC with the same name as the dissolved LLC. Nevertheless, the District Court determined that the plaintiff lacked standing to sue on behalf of the dissolved LLC and granted the defendant summary judgment. On appeal, the Supreme Court affirmed, agreeing that 6 years exceeded a reasonable amount of time for the LLC to wind up its business affairs. The Supreme Court further concurred that neither the plaintiff individually nor the new LLC had standing to sue the defendant since neither was a party to the sublease. Deschamps v. Farwest Rock, Ltd., 2020 MT 270, 402 Mont. 15, 474 P.3d 1282.

35-8-913. Appeal from denial of reinstatement.

Compiler's Comments

2017 Amendment: Chapter 23 in (1) substituted "deliver a notice to the company" for "serve the company with a record"; and in (2) near beginning after "within 30 days after" substituted "delivery" for "service". Amendment effective October 1, 2017.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 812, ULLCA.

35-8-914. Involuntary dissolution — procedure.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

Part 10
Foreign Limited Liability Companies

35-8-1001. Authority to transact business required.

Compiler's Comments

2017 Amendment: Chapter 23 in (4) in middle after "The secretary of state shall" substituted "deliver a notice" for "provide written notice". Amendment effective October 1, 2017.

1999 Amendment: Chapter 363 inserted (4) providing that, except for goods or services prepared out of state for delivery or use in this state, a foreign limited liability company transacts business when it enters into a contract with the state or one of its political subdivisions and needs a certificate of authority to transact business, requiring the secretary of state to so notify the contracting parties, giving the foreign limited liability company 30 days from the date of the notice to obtain a certificate, and prohibiting the voiding of an existing contract prior to the expiration of the 30 days. Amendment effective April 20, 1999.

Severability: Section 5, Ch. 363, L. 1999, was a severability clause.

Retroactive Applicability: Section 7, Ch. 363, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to contracts entered into on or subsequent to January 1, 1999."

Source: This section is based on 35-1-1026, MCA (now repealed), and § 1003, ULLCA.

35-8-1002. Consequences of transacting business without authority.

Compiler's Comments

1999 Amendment: Chapter 363 in (5) inserted exception clause; inserted (6) providing that a contract between a foreign limited liability company and the state or a political subdivision of the state is voidable by the state or political subdivision if the foreign limited liability company failed to obtain a certificate of authority as required under 35-8-1001. Amendment effective April 20, 1999.

Severability: Section 5, Ch. 363, L. 1999, was a severability clause.

Retroactive Applicability: Section 7, Ch. 363, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to contracts entered into on or subsequent to January 1, 1999."

Source: This section is based on 35-1-1027, MCA (now repealed), and §§ 1008 and 1009, ULLCA.

35-8-1003. Application for certificate of authority.

Official Comments

As with articles of organization, the application must be signed and filed with the filing office. See Sections 105, 107 (name registration) [35-8-103, 35-8-108], 205, 206, 209 (liability for false statements) [35-8-204, 35-8-205, 35-8-217], and 1005 [35-8-1009].

Compiler's Comments

2015 Amendments — Composite Section: Chapter 42 deleted former (2) that read: "(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the jurisdiction under whose law the foreign limited liability company is organized"; inserted (7) regarding statement of compliance for foreign limited liability company; and made minor changes in style. Amendment effective February 18, 2015.

Chapter 166 inserted (8) regarding requirements for one or more series of members; and made minor changes in style. Amendment effective April 1, 2015.

2011 Amendment: Chapter 26 in (1)(d) substituted "business mailing address" for "street address"; and in (1)(f) substituted "business mailing addresses" for "usual business addresses". Amendment effective October 1, 2011.

2007 Amendment: Chapter 240 in (1)(b) near middle substituted "jurisdiction" for "state or country"; in (1)(d) at end inserted "wherever located"; substituted (1)(e) concerning information required by 35-7-105(1) for former text that read: "the address of its registered office in this state and the name of its registered agent at that office"; in (2) near end substituted "jurisdiction" for "state or country"; and made minor changes in style. Amendment effective October 1, 2008.

Source: This section is based on 35-1-1028, MCA (now repealed). See also § 1002, ULLCA.

Administrative Rules

ARM 44.5.115 Limited liability company fees.
ARM 44.5.202 Certificate of existence for foreign entities.

35-8-1007. Amended certificate of authority.

Compiler's Comments

2015 Amendment: Chapter 280 in (1)(c) inserted "tribe". Amendment effective April 23, 2015.

Source: This section is based on 35-1-1029, MCA (now repealed).

35-8-1008. Effect of certificate of authority.

Official Comments

The law where a foreign limited liability company is organized, rather than this Act [Title 35, ch. 8], governs that company's internal affairs and the liability of its owners. Accordingly, any difference between the laws of the foreign jurisdiction and this Act [Title 35, ch. 8] will not constitute grounds for denial of a certificate of authority to transact business in this State. However, a foreign limited liability company transacting business in this State by virtue of a certificate of authority is limited to the business and powers that a limited liability company may lawfully pursue and exercise under Section 112 [35-8-107].

Compiler's Comments

Source: This section is based on 35-1-1030, MCA (now repealed). See also § 1001, ULLCA.

35-8-1009. Name.

Compiler's Comments

Source: This section is modeled after § 1004 of the ABA Prototype Act. See also § 1005, ULLCA.

35-8-1010. Withdrawal of foreign limited liability company.

Compiler's Comments

2015 Amendment: Chapter 280 in (2)(a) inserted "tribe". Amendment effective April 23, 2015.

Source: This section is based on 35-1-1037, MCA (now repealed). See also § 1007, ULLCA.

35-8-1011. Grounds for revocation.

Compiler's Comments

2015 Amendment: Chapter 280 in (4) near middle after "state" inserted "tribe". Amendment effective April 23, 2015.

2007 Amendment: Chapter 240 in (3) near beginning after "state" deleted "under 35-8-105", after "agent" deleted "or registered office", after "changed" deleted "that its registered agent has", after "resigned" deleted "or that its registered office has been discontinued", and at end deleted "or discontinuance"; and made minor changes in style. Amendment effective October 1, 2008.

Source: This section is based on 35-1-1038, MCA (now repealed). See also § 1006, ULLCA.

35-8-1012. Procedure for and effect of revocation.

Compiler's Comments

2017 Amendment: Chapter 23 in (1) near middle substituted "deliver a notice to" for "serve" and after "foreign limited liability company" deleted "with written notice"; in (2) in middle after "within 60 days after" substituted "delivery of the notice" for "service of the notice is mailed" and in last sentence substituted "deliver" for "mail"; and in (4) in third sentence near beginning substituted "deliver" for "mail". Amendment effective October 1, 2017.

Source: This section is based on 35-1-1039, MCA (now repealed).

35-8-1013. Appeal from revocation.

Compiler's Comments

Source: This section is based on 35-1-1040, MCA (now repealed).

35-8-1014. Admission of foreign professional limited liability companies — application — revocation.

Compiler's Comments

2007 Amendment: Chapter 240 in (4) in second sentence near end substituted "through its registered agent" for "at its registered office in this state". Amendment effective October 1, 2008.

Source: This section is based on 35-4-411, MCA.

Part 11

Suits by and Against the Limited Liability Company

35-8-1101. Suits by and against limited liability company.

Compiler's Comments

Source: This section is modeled after § 1101 of the ABA Prototype Act.

35-8-1104. Derivative actions — proper plaintiff — pleading — expenses.

Official Comments

A member may bring an action on behalf of the company when the members or managers having the authority to pursue the company recovery refuse to do so or an effort to cause them to pursue the recovery is not likely to succeed. See Comments to Section 411(a) (personal action of member against company or another member) [35-8-411(1)].

There is no obligation of the company or its members or managers to respond to a member demand to bring an action to pursue a company recovery. However, if a company later decides to commence the demanded action or assume control of the derivative litigation, the member's right to commence or control the proceeding ordinarily ends.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Sections 1101 through 1104, ULLCA.

Part 12

Merger

Part Compiler's Comments

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

35-8-1201. Merger.

Official Comments

This section sets forth a "safe harbor" for cross-entity mergers of limited liability companies with both domestic and foreign: corporations, general and limited partnerships, and other limited liability companies. Subsection (c) [subsection (3)] makes clear that the terms and conditions of the plan of merger must be approved by all of the partners unless applicable state law specifies otherwise for the merger.

Compiler's Comments

1999 Amendment: Chapter 302 substituted current text concerning plan of merger for former text that read: "(1) Pursuant to any agreement, a domestic limited liability company may merge with or into one or more limited liability companies formed under the laws of this state or any other state. The surviving limited liability company is as provided in the merger agreement.

(2) A domestic limited liability company that is not the surviving limited liability company in the merger shall file articles of dissolution that must have an effective date not later than the effective date of the merger.

(3) If, following a merger of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the surviving limited liability company is not a domestic limited liability company, there must be attached to the articles of dissolution for each domestic limited liability company articles of merger executed by the surviving limited liability company:

(a) stating that the surviving limited liability company may be served with process in the state of Montana in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;

(b) irrevocably appointing the secretary of state as the surviving limited liability company's agent to accept service of process in any action, suit, or proceeding; and

(c) specifying the address to which a copy of process must be mailed to the surviving limited liability company by the secretary of state.

(4) When the articles of dissolution required by subsection (2) have become effective, the following must be vested in and enforced against the surviving limited liability company as they were in each of the limited liability companies that merged:

(a) all of the rights, privileges, and powers of each of the limited liability companies that merged;

(b) all property, real, personal, and mixed;

(c) all debts due to any of the limited liability companies; and

(d) all other things and causes of action belonging to each of the limited liability companies." Amendment effective April 12, 1999.

Source: Section 904, ULLCA.

35-8-1202. Articles of merger.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 905, ULLCA.

35-8-1203. Effect of merger.

Compiler's Comments

2007 Amendment: Chapter 240 in (2) at beginning of first sentence deleted "The secretary of state is an agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of any party to the merger" and at end substituted "service of process may be made on the foreign entity as provided in 35-7-113(2)" for "at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger"; and made minor changes in style. Amendment effective October 1, 2008.

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 906, ULLCA.

35-8-1205. Definitions.

Official Comments

Section 907 [35-8-1211] makes clear that the provisions of Article 9 [Title 35, ch. 8, part 12] are not mandatory. Therefore, a partnership or a limited liability company may convert or merge in any other manner provided by law. However, if the requirements of Article 9 [Title 35, ch. 8, part 12] are followed, the conversion or merger is legally valid. Article 9 [Title 35, ch. 8, part 12] is not restricted to domestic business entities.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 901, ULLCA.

35-8-1210. Conversion of partnership or limited partnership to limited liability company.

Official Comments

Subsection (b) [subsection (2)] makes clear that the terms and conditions of the conversion of a general or limited partnership to a limited liability company must be approved by all of the partners unless the partnership agreement specifies otherwise.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Section 902, ULLCA.

35-8-1211. Effect of conversion — entity unchanged — part not exclusive.

Official Comments

A conversion is not a conveyance or transfer and does not give rise to claims of reverter or impairment of title based on a prohibited conveyance or transfer. Under subsection (b)(1) [subsection (2)(a)], title to all partnership property, including real estate, vests in the limited liability company as a matter of law without reversion or impairment.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Source: Sections 903 and 907, ULLCA.

Part 13
Professional Limited Liability Company

35-8-1301. Purposes of professional limited liability companies.

Compiler's Comments

Source: This section is based on 35-4-205, MCA.

35-8-1302. Professional limited liability company name.

Compiler's Comments

1999 Amendment: Chapter 302 in (1) inserted "professional limited company", "professional llc", and "pllc"; and made minor changes in style. Amendment effective April 12, 1999.

Severability: Section 58, Ch. 302, L. 1999, was a severability clause.

Saving Clause: Section 59, Ch. 302, L. 1999, was a saving clause.

Source: This section is based on 35-4-206, MCA.

35-8-1303. Professional limited liability company managers.

Compiler's Comments

Source: This section is based on 35-4-207, MCA.

35-8-1304. Membership in professional limited liability company.

Compiler's Comments

Source: This section is based on 35-4-208, MCA.

35-8-1305. Rendering services.

Compiler's Comments

Source: This section is based on 35-4-403, MCA.

35-8-1306. Responsibility for services.

Compiler's Comments

1997 Amendment: Chapter 268 in (1), in three places, and in (2), in three places, before reference to employees inserted reference to members; and made minor changes in style.

Source: This section is based on 35-4-404, MCA.

35-8-1307. Relationship to clients and patients.

Compiler's Comments

Source: This section is based on 35-4-405, MCA.

CHAPTER 9
MONTANA CLOSE CORPORATION ACT

Chapter Official Comments

Source: The official comments to this chapter were written by the Committee on Corporate Laws, Section of Corporation, Banking, and Business Law, American Bar Association.

Introductory Comment: The Model Statutory Close Corporation Supplement [Title 35, chapter 9, MCA] is an optional statute developed for states that determine that it is advisable to enact an integrated statute dealing with the problems of closely held corporations. This Supplement is not part of the Revised Model Business Corporation Act, and the decision whether to enact this Supplement should be considered independently of the enactment of the Model Act.

This Supplement was developed on the assumption that the state in question has enacted the Revised Model Business Corporation Act, or at least a statute with the same degree of flexibility as the Revised Model Act in the following areas: issuance of shares for nontraditional forms of consideration (MBCA § 6.21) [35-1-605, 35-1-606, 35-1-610 (all repealed)], preemptive rights (MBCA § 6.30) [35-1-511 (now repealed)], supermajority voting rights for shareholders (MBCA §§ 7.27, 10.21) [35-1-214, 35-1-505, 35-1-507 (all repealed)] and directors (MBCA §§ 8.24, 10.22) [35-1-401, 35-1-405 (both repealed)], action by shareholders or board of directors without a meeting (MBCA §§ 7.04, 8.21) [35-1-406, 35-1-509 (both repealed)], voting by voting groups (MBCA § 7.27) [35-1-507 (now repealed) (Montana version differs)], cumulative voting for directors (MBCA § 7.28) [35-1-506 (now repealed) varies significantly], shareholder voting agreements (MBCA § 7.31) [35-1-508 (now repealed)], voting trusts (MBCA § 7.30) [35-1-508 (now repealed)], irrevocable proxies (MBCA § 7.22(d)) [35-1-506 (now repealed)], share transfer restrictions (MBCA § 6.27) [35-1-617 (now repealed)], protection of class voting rights for the election and removal of directors (MBCA §§ 8.04 [no Montana provision], 8.08(b), 8.08(c)) [35-1-408 (now repealed)], filling of vacancies on the board of directors (MBCA § 8.10(b)) [no Montana provision], flexibility in appointment of officers (MBCA § 8.40) [no Montana provision], shareholders' voting rights with respect to amendments of articles of incorporation and mergers (MBCA §§ 10.04, 11.03(f)) [35-1-208, 35-1-803 (both repealed)], dissenters' rights (MBCA ch. 13) [35-1-810, 35-1-812 (both repealed)], and judicial dissolution (MBCA § 14.30) [35-1-921 (now repealed), 35-6-102].

In addition, section 8.01 of the 1984 Model Act [35-1-401, 35-1-515 (both repealed)] authorizes a corporation with less than 50 shareholders [25 in Montana] to dispense with the board of directors or limit its authority in whole or in part. This authorization is replicated in the Model Statutory Close Corporation Supplement.

Under a statute with the flexibility of the Revised Model Act it is usually possible to achieve any desired legal result within a closely held corporation without recourse to the Close Corporation Supplement by the use of sophisticated contracts among the shareholders and special provisions in the articles of incorporation and the bylaws. This Supplement therefore does not significantly change the results that may be obtained under the Revised Model Act; rather, the advantages of the Supplement lie in the certainty and flexibility that it provides. Also, in many situations, the Supplement facilitates the achievement of desired results with significantly less drafting and significantly lower probabilities that some factor has been overlooked. The Supplement further provides an optional standard-form buy-out arrangement in the recurring situation where a shareholder in a closely held corporation has died or been incapacitated leaving a spouse who is unable or unwilling to work in the enterprise.

Many states have adopted a variety of different provisions relating to closely held corporations; the Model Statutory Close Corporation Supplement draws from this broad experience within various states, and develops principles for closely held corporations based on this experience. Not all states, however, have adopted integrated statutes analagous to the Supplement; some state legislatures have not adopted special provisions relating to close corporations; others have chosen to enact such provisions on a nonintegrated basis as part of their general corporation statutes. The 1969 Model Act essentially adopted a nonintegrated approach.

Examples of situations in which the Supplement may be advantageous include:

(1) A small enterprise that is likely to remain a closely held business, all or substantially all of whose shareholders are active in the business, may avoid the expense of drafting an elaborate set of specially tailored close corporation documents. If the shareholders elect to be governed by the Supplement, the share transfer restriction in sections 11 [35-9-202] and 12 [35-9-203] automatically apply and a right to have their shares purchased at death may be provided by including the statement in the articles of incorporation that sections 14 through 17 [35-9-205 through 35-9-208] shall apply (with such modifications or alterations as are deemed appropriate).

(2) A professional corporation whose shareholders wish to be taxed as a corporation may operate internally as a partnership. Under sections 20 and 21 [35-9-301, 35-9-302] the corporation may be managed entirely by the shareholders, who may provide for voting on a one-vote-per-shareholder basis rather than on the basis of the usual rule of one-vote-per-share.

(3) A wholly owned subsidiary corporation may be created and operated with a very simple corporate structure. Such a subsidiary corporation may operate without a board of directors (§ 21) [35-9-302], need not adopt bylaws (§ 22) [35-9-303], need not hold annual meetings except upon a demand from a shareholder (§ 23(b)) [35-9-304], and may have a single officer with authority to sign all legal documents on behalf of the corporation (§ 24) [35-9-305].

This Supplement may also be useful in situations in which the shareholders of a closely held corporation obtain basic protection of their rights through sophisticated contractual arrangements, but cannot achieve desired management flexibility and remedies under the general business corporation statute. The shareholders, for example, may wish to authorize director proxies (§ 20) [35-9-301] or to allow less than a majority to elect to dissolve the corporation (§ 33) [35-9-404].

Chapter Compiler's Comments

Source: This chapter is derived from the Model Statutory Close Corporation Supplement prepared in 1983 by the Committee on Corporate Laws, Section of Corporation, Banking, and Business Law, American Bar Association.

Saving Clause: Section 27, Ch. 432, L. 1987, was a saving clause.

Severability: Section 28, Ch. 432, L. 1987, was a severability section.

Applicability: Section 29, Ch. 432, L. 1987, provided that this chapter applies to all corporations electing close corporation status on or after October 1, 1987.

Chapter Case Notes

No Right of Individual Guarantor to Sue on Behalf of Corporation: Under former Rule 17(a), M.R.Civ.P. (now superseded), an action must be brought by the person who is entitled to enforce the right according to the governing substantive law and will not necessarily be brought in the name of the person who will ultimately benefit from the recovery. In the case of corporations, neither the Montana Business Corporation Act nor the Montana Close Corporation Act provides for an individual guarantor to sue on behalf of the corporation. Therefore, the District Court did not err in determining that claims for misuse and misappropriation of corporate funds could not be brought by individual plaintiffs. Kondelik v. First Fidelity Bank of Glendive, 259 M 446, 857 P2d 687, 50 St. Rep. 874 (1993).

Chapter Law Review Articles

The ABA Model Statutory Close Corporation Act: A New Opportunity for "Made in Montana" Corporations, Bahls & Quist, 49 Mont. L. Rev. 66 (1988).

Part 1
General

Part Case Notes

Lawsuit by Shareholder Causing Damages Considered Breach of Fiduciary Duty of Care: Sletteland brought a suit against two other corporate shareholders for charging excessive attorney fees and seeking their removal as corporate directors. The District Court held that the fees were excessive, but found no grounds for removal. The other shareholders filed a counterclaim against Sletteland, alleging that he breached his fiduciary duty in bringing the lawsuit because the timing of the suit caused refinancing of a project to fail, resulting in damage to the corporation and to other shareholders. The District Court agreed, and both parties appealed their respective issues. The Supreme Court reversed on the issue of excessive fees, but affirmed on the issue of breach of fiduciary duty. The fiduciary duty between shareholders of a close corporation is one of utmost good faith and loyalty. Sletteland admittedly knew of the refinancing and, as an attorney and investment banker, also knew the effect that a lawsuit alleging misconduct by board members would have on a refinancing effort. In fact, it appeared that the suit was brought to specifically derail the refinancing. Sletteland was the person who determined the timing of the suit, which was filed immediately before the individuals involved in the refinancing were to meet for discussions, and when asked to withdraw the suit so refinancing could conclude, he refused to do so. Sletteland did not use the care that an ordinarily prudent person would use in a similar situation, resulting in the breach of fiduciary duty. The Supreme Court also affirmed the award of damages. Although future damages could not be calculated exactly in this case, the District Court did not abuse its discretion in basing its calculations on expert testimony of a well-known regional economist. Sletteland v. Roberts, 2000 MT 382, 304 M 21, 16 P3d 1062, 57 St. Rep. 1639 (2000).

Fiduciary Duty Between Shareholders in Close Corporation When No Other Type of Relationship Exists: The fiduciary duty between stockholders of a close corporation is one of utmost good faith and loyalty. However, the controlling group should not be stymied by a minority stockholder's grievances if the controlling group can demonstrate a legitimate business purpose and the minority stockholder cannot demonstrate a less harmful alternative. If called on to settle a dispute between the stockholders, the court must weigh the legitimate business purpose, if any, against the practicability of a less harmful alternative. Daniels v. Thomas, Dean & Hoskins, Inc., 246 M 125, 804 P2d 359, 47 St. Rep. 2293 (1990), citing Donahue v. Rodd Electrotype Co. of New England, Inc., 328 NE 2d 505 (Mass. 1975), and Wilkes v. Springside Nursing Home, Inc., 353 NE 2d 657 (Mass. 1976), and distinguishing Skierka v. Skierka Bros., Inc., 192 M 505, 629 P2d 214 (1981), Deist v. Wachholz, 208 M 207, 678 P2d 188 (1984), and Dunfee v. Baskin-Robbins, 221 M 447, 720 P2d 1148 (1986).

In Warren v. Campbell Farming Corp., 2011 MT 324, 363 Mont. 190, 271 P.3d 36, the Montana Supreme Court, in answering a certified question from the Tenth Circuit Court of Appeals, revisited the Daniels test and concluded that the Daniels test does not apply to claims involving director conflict of interest transactions. However, the Daniels test does apply to minority shareholders' claims of breach of fiduciary duties against majority shareholders.

35-9-101. Short title.

Compiler's Comments

Source: This section is derived from section 1 of the ABA Model Statutory Close Corporation Supplement.

35-9-102. Application of Montana Business Corporation Act and Montana Professional Corporation Act.

Official Comments

Provisions in the Revised Model Business Corporation Act apply to all statutory close corporations except to the extent they are not consistent with the provisions in this Supplement. The relationship between this Supplement [chapter] and the Model Act [Title 35, chapter 1, MCA (now repealed and replaced by Title 35, chapter 14, MCA)] is analagous to the relationship between the Uniform Partnership Act and the Uniform Limited Partnership Act. Whenever this Supplement [chapter] is silent on an issue, the corresponding provision of the Model Act [Title 35, chapter 1, MCA (now repealed and replaced by Title 35, chapter 14, MCA)] applies. These corresponding provisions are referred to in the cross-references following each section of the supplement [chapter]. See also the Official Comments to sections 31 [35-9-402] and 32 [35-9-403] for discussion of the applicability of these statutes when a corporation terminates its status as a statutory close corporation.

Under section 2(b) [35-9-102(2)] the provisions of this Supplement [chapter] apply to all professional corporations that elect to be statutory close corporations, except to the extent the provisions are inconsistent with the provisions of the Model Professional Corporation Supplement [Title 35, chapter 4]. See the Official Comment to section 2 [35-4-109] of the Model Professional Corporation Supplement for a discussion of the relationship between the Model Professional Corporation Supplement and the Revised Model Business Corporation Act.

Section 2(c) [35-9-102(3)], which is derived from section 356 of the Delaware Corporation Law, makes clear that enactment of the Supplement [chapter] does not affect the law applicable to corporations, including closely held corporations, that are not statutory close corporations.

Compiler's Comments

Source: This section is derived from section 2 of the ABA Model Statutory Close Corporation Supplement.

Administrative Rules

ARM 44.5.114 Corporations — profit and nonprofit fees.

35-9-103. Definition and election of statutory close corporation status.

Official Comments

1. 50-SHAREHOLDER LIMIT [25 in Montana]

With the exception of a corporation having more than 50 [25 in Montana] shareholders at the time it wishes to become a statutory close corporation, all corporations are potentially eligible to make the election. (See MBCA section 1.42 [not adopted in Montana] for the method of determining the number of shareholders.) The election is made by including in the articles of incorporation a statement that the corporation is a statutory close corporation. An electing corporation continues to be governed by the Supplement [this chapter] unless the shareholders revoke this election. Other terminating events, such as an increase in the number of shareholders beyond some arbitrary maximum or the making of a public share offering, commonly found in existing close corporation statutes create the undesirable possibility of inadvertent terminations of close corporation status and do not seem to serve any purpose except to complicate the statutory framework.

The danger that a large corporation with numerous shareholders might attempt to elect close corporation status in order to operate without a board of directors, although highly unlikely as a practical matter, is the reason for the 50 shareholder limit [25 in Montana] in section 3(b) [35-9-103(2)]. A new corporation that wishes to elect statutory close corporation status at the time of its initial incorporation is eligible, however, regardless of the number of subscribers. Likewise, a new or existing corporation that becomes a statutory close corporation at a time when it has fewer than 50 shareholders [25 in Montana] may continue to operate as a statutory close corporation even though it subsequently has more than 50 shareholders [25 in Montana]. The potential for abuse by evasion of the normal rules governing corporations is not considered to be sufficiently great to justify an absolute numerical limitation, which inevitably creates the possibility of an unknowing change in status, and complexity of statutory provisions designed to deal with those changes of status.

2. SPECIAL DESIGNATION

Consideration was given to requiring a statutory close corporation to use a special designation, such as "A Statutory Close Corporation" or "S.C.C.," on all letterhead and documents to distinguish it from a regular corporation. Special designations are used in European corporation statutes to distinguish between public and private companies. This practice has not been used in the past in the United States except with respect to professional corporations. See section 15 [35-4-206] of the Model Professional Corporation Supplement, which under section 2(b) [35-9-102(2)] of the Supplement applies to a professional corporation that elects to become a statutory close corporation. The only purpose served by the designation is to provide special notice to creditors and shareholders; of course, the usual name of a corporation gives a creditor notice of the company's limited liability and shareholders have notice of the corporation's special status because of the notice on the share certificates required by section 10 [35-9-201].

3. ARTICLES OF INCORPORATION

The articles of incorporation contain the basic information about a corporation. They may also give notice to prospective shareholders and creditors of special or unusual contractual arrangements among the shareholders.

The only required difference between articles of incorporation for a statutory close corporation and for a regular corporation is the the [sic] statement designating the corporation to be a statutory close corporation. Although statutory close corporations may use a form of articles of incorporation identical to that for any corporation, a special format that takes into account the provisions respecting share transfer restrictions (sections 11 and 14) [35-9-202 and 35-9-205], the possibility that the corporation will not have a board of directors (section 21) [35-9-302], and other optional provisions that can be utilized by statutory close corporations may be more useful. See for example, the format published in 37 BUS. LAW. 309 (1981).

4. REQUIRED VOTE

Some states, e.g. Maryland and Texas, require unanimous consent of the shareholders for an existing corporation to become a statutory close corporation. Most states, however, follow the pattern of the Delaware statute that requires a two-thirds vote of all outstanding shares. The Close Corporation Supplement adopts a compromise between the two positions by requiring a two-thirds vote of each class or series of shares, voting as separate voting groups, but shareholders opposed to the election are granted dissenters' rights.

5. TRANSITION PROVISIONS

A state having an existing close corporation statute when it enacts the Model Close Corporation Supplement may allow existing close corporations to quality automatically for close corporation status by filing amended articles of incorporation complying with section 3 [this section]. See section 50 [sec. 29, Ch. 432, L. 1987].

Compiler's Comments

2019 Amendment: Chapter 271 in (2) at end substituted "assert appraisal rights under Title 35, chapter 14, part 13" for "assert dissenters' rights under 35-1-826 through 35-1-839". Amendment effective June 1, 2020.

1991 Amendment: At end of (2) substituted "35-1-826 through 35-1-839" for "35-1-810 and 35-1-812". Amendment effective January 1, 1992.

Source: This section is derived from section 3 of the ABA Model Statutory Close Corporation Supplement.

Part 2
Share Transfer Restrictions

35-9-201. Notice of statutory close corporation status on issued shares.

Official Comments

The purpose of this section is to put shareholders in a statutory close corporation on notice that their shares are subject to transfer restrictions and that their rights and liabilities may be different from those of shareholders in other corporations. The notice is essential to bind third parties who are not signatories to the original agreements establishing the rights of shareholders among themselves.

The notice is also drafted to satisfy the notice requirements in cases where a statutory close corporation has uncertificated shares. Under section 6.26 [35-1-610 (now repealed)] of the Revised Model Act, the notice required by this section would appear in the transaction statement.

Compiler's Comments

2019 Amendment: Chapter 271 in (3) near middle substituted "35-14-627" for "35-1-628". Amendment effective June 1, 2020.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In (3) substituted "35-1-628" for "35-1-617". Amendment effective January 1, 1992.

Source: This section is derived from section 10 of the ABA Model Statutory Close Corporation Supplement.

35-9-202. Share transfer prohibition.

Official Comments

This section sets out a standardized transfer prohibition that automatically applies unless the articles of incorporation provide otherwise. The prohibition is designed to accomplish two purposes: first, to provide a prohibition that fits the needs of the "typical" close corporation; and second, to facilitate alteration in order to fit the special needs of the shareholders in a particular corporation.

1. COVERED TRANSFERS

The definition of transfer in subsection (a) [subsection (1)] is intended to cover every possible type of transaction that might create an interest in corporate shares, including purchase, sale, discount, negotiation, gift, trust, legacy, inheritance, pledge, mortgage, lien, creation of a security interest, hypothecation, bankruptcy, or transfer pursuant to court order.

2. EXEMPT TRANSFERS

Subsection (b) [subsection (2)] describes a number of exemptions to the prohibition of subsection (a) [subsection (1)]. Intrashareholder and intrafamily transfers are exempt on the assumption that most "typical" close corporation shareholders would want these transfers to be exempt. Transfers to executors, administrators, trustees, or receivers that result from death, bankruptcy, liquidation, or dissolution of a shareholder are also exempt. In addition, transfers that are in effect merely internal recapitalizations and transfers having the approval of all the shareholders are exempt. Transactions in which the stock is pledged or hypothecated are also exempt when no voting rights are given to the pledgee. In all these situations, however, further attempted transfers by the transferees are subject to the prohibitions unless the subsequent transfer qualifies under one of the exemptions. For example, although a pledge of shares as collateral for a loan is an exempt transaction (unless the pledgee is given the power to vote the shares), a subsequent sale of the pledged stock by the pledgee in a foreclosure proceeding can only be made in accordance with section 12 [35-9-203] unless the transfer is exempt under subsection (b) [subsection (2)].

A final type of exempt transfer is one made after the corporation ceases to be a statutory close corporation. The automatic elimination of the restrictions on transfer at termination of the close corporation election is justified on the assumption that in most cases the shareholders would want the prohibition to be ineffective after termination. The right to receive the fair value of his shares by voting against the termination (see section 31) [35-9-402] is a reasonable remedy for the shareholders opposed to termination on any ground. Alternative methods for continuing the restriction after termination of statutory close corporation status exist. See the Official Comment to section 31 [35-9-402].

3. BUILT-IN FLEXIBILITY

The statutory prohibition can be limited or modified simply by stating in the articles of incorporation that it does not apply or by specifying in the articles of incorporation the changes from the statutory language. For example, if the shareholders wanted all pledges to be subject to the transfer prohibition but otherwise found the statutory prohibition acceptable, the attorney drafting the articles of incorporation may simply provide in the articles of incorporation: "Subsection 11(b)(6) [35-9-202(2)(f)] does not apply." All shareholders thus have some automatic basic protection against unwanted transfers plus maximum flexibility to alter or replace the statutory scheme. See generally the annotation to section 6.27 of the revised Model Business Corporation Act, for a discussion of cases involving share transfer restrictions.

Compiler's Comments

2019 Amendment: Chapter 271 in (2)(e) near middle substituted "Title 35, chapter 14, part 11" for "Title 35, chapter 1, part 8"; and made minor changes in style. Amendment effective June 1, 2020.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Source: This section is derived from section 11 of the ABA Model Statutory Close Corporation Supplement.

35-9-203. Share transfer after first refusal by corporation.

Official Comments

If the proposed transfer is not exempt under section 11(b) [35-9-202(2)], the shareholder may sell his shares only if he obtains an offer from a nonshareholder who meets the requirements of subsection (b)(1) and (2) [subsection (2)(a) and (b)] of this section. These requirements are designed to protect the corporation and other shareholders against serious adverse tax consequences that might result from having the third person as a shareholder. The mere offer by a shareholder to sell his shares to the corporation at a price he designates does not trigger the first refusal option and other rights provided by this subsection. Any broader rights guaranteeing a market for the shares by the corporation or other shareholders must be provided in a buy-out agreement. See the Official Comment to section 14 [35-9-205].

Subsection (a) [subsection (1)] also requires that any third-party offer submitted to the corporation be a cash offer. An offer based on other consideration, such as shares in another corporation, is not a qualifying offer, and unless the shareholder can convince the third party to make a cash offer, the shareholder has no right to sell or transfer his shares to the third party should the corporation refuse to consent to the transfer or to purchase the offered shares. The decision to exclude noncash offers reflects that most third-party offers are made for cash and that the mechanics of dealing with noncash offers would unduly complicate the statutory framework. If the possibility of receiving noncash offers is considered significant, appropriate language dealing with such offers may be included in the articles of incorporation. Since the corporation cannot match in specie the noncash portion of the third-party offer, some mechanism, such as arbitration, must be set out to resolve any disputes over the adequacy of an offer made by the corporation to purchase the offered shares.

With respect to a proposed transfer to a third party, subsection (c) [subsection (3)] encourages the parties to reach an agreement in a reasonably short period of time. The 15-day interval between the last day for holding a shareholders' meeting to consider the third-party offer and the cutoff date for the notice of acceptance is designed to allow time for the corporation and the other shareholders to contact potential third-party purchasers or shareholders not present at the meeting at which the decision to purchase the shares was taken and to make any necessary arrangements to finance the purchase.

If the corporation does not arrange the purchase of the offered shares, subsection (f) [subsection (6)] permits their transfer to the third person only if made within 120 days of the date the shareholder notifies the corporation of the third-party offer. Additionally, the transaction must be consummated on the terms set forth in the notice of the offer. For example, a sale for less than the total price specified in the notice or an installment purchase when a cash sale is specified in the notice would not qualify under this section. If the transfer to the third person is not validly made, the offering shareholder remains subject to the provisions of this section. Thus the shareholder may make a transfer exempt under section 11(b) [35-9-202(2)] or obtain another qualifying offer from a third person at any time in the future.

If the transfer to the third party occurs, the shares remain subject to the transfer prohibition in section 11 [35-9-202] unless the transferee has no notice or knowledge of the restrictions. See sections 10 [35-9-201] and 13 [35-9-204].

For discussion of subsection (e) [subsection (5)], see the Official Comment to section 14 [35-9-205].

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: This section is derived from section 12 of the ABA Model Statutory Close Corporation Supplement.

Law Review Articles

Drafting Stockholder Agreements for the Closely-Held Business, Lavelle, 4 DePaul Bus. L.J. 109 (1991).

35-9-204. Attempted share transfer in breach of prohibition.

Official Comments

This section provides additional protection for the effectiveness of the transfer restrictions applicable to the shares of a statutory close corporation. If the required notice of the restrictions has not been given (see section 10) [35-9-201] and the transferee does not have actual notice of the restrictions, the corporation is given a 30-day option to purchase the shares. If the corporation exercises its option, the proposed transferee may pursue a breach of warranty claim or any other appropriate remedy against the proposed transferor. Section 13 [35-9-204] is derived from the Delaware law.

This section also gives the corporation an option to purchase shares attempted to be transferred in violation of a transfer restriction that has been held unenforceable by a court.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: This section is derived from section 13 of the ABA Model Statutory Close Corporation Supplement.

35-9-205. Compulsory purchase of shares after death of shareholder.

Official Comments

1. INTRODUCTION

Sections 14 through 17 [35-9-205 through 35-9-208], which are operative only if the articles of incorporation specifically so provide, guarantee a buy-out at the death of a shareholder. By including appropriate language in the articles of incorporation, the mandatory buy-out authorized by this section may be limited to the death of one or more specified shareholders, or to shareholders holding a particular class of shares. It may also be expanded to cover other contingencies—for example, shareholders who retire or who are disabled. Moreover, the statutory language may be modified to change the type of buy-out. Other commonly used buy-out arrangements include an optional sell-optional purchase, mandatory sell-optional purchase, and mandatory sell-mandatory purchase, with the seller being a shareholder wishing to dispose of his shares and the purchaser being the corporation, the remaining shareholders, or a combination of the two. The optional sell-mandatory purchase option was chosen on the ground that it was the one most likely to be chosen by a shareholder in a closely held corporation, all other factors being equal.

The decision to utilize any kind of buy-out arrangement should be made only after careful consideration of the factors involved in the particular situation. If sections 14 through 17 [35-9-205 through 35-9-208] are used, the election must be made in the articles of incorporation by specifying that sections 14 through 17 [35-9-205 through 35-9-208] apply. The articles of incorporation may also vary the statutory provisions in any desired manner.

These sections are intended to work in tandem with the share transfer prohibition of section 11 [35-9-202]. Under the share transfer prohibition there is no obligation to purchase, while under sections 14 through 17 [35-9-205 through 35-9-208] there is an obligation to purchase by the corporation or the other shareholders if the estate wants to sell; if this obligation is not met, the corporation will be dissolved.

The statute grants the estate of a deceased shareholder the right to compel a purchase of the decedent's shares since this is the situation most often covered in privately drafted contractual buy-outs. The problem of illiquidity of close corporation shares is most acute in this situation because the estate frequently needs cash for estate taxes and other purposes. At the same time the remaining shareholders are often concerned about having the decedent's spouse and children involved in the management of the corporation. A significant amount of shareholder litigation involving close corporations involves disputes between the surviving shareholders and the successors in interest of a deceased shareholder. Having a guaranteed market for the decedent's shares reduces the likelihood that disputes will arise. Life insurance may be used to fund part or all of the purchase obligation. In the absence of available cash, an installment arrangement may help to alleviate any financial strain on the corporation. The remaining shareholders may agree to purchase some or all of the shares or find a third-party purchaser if it is undesirable for the corporation to purchase all of the offered shares. Furthermore, if the parties do not have an existing agreement containing a binding price formula or other terms often contained in buy-out agreements and are unable to agree voluntarily on the price or other terms, a court action may be brought in which a judge in his discretion may resolve the differences and structure a buy-out plan that is realistic in light of the corporation's finances.

In summary, assuming some sort of mandatory buy-out in a particular situation is desirable, the major advantage of electing sections 14 through 17 [35-9-205 through 35-9-208] is that they provide basic protection in the event the shareholders have failed to enter into an appropriate private agreement, or have entered into a buy-out agreement but have failed to agree upon a buy-out price formula, or have agreed upon a formula but have neglected to provide other necessary terms such as interest rates or number of installments in the event deferred purchases are authorized or necessary. Sections 14 through 17 [35-9-205 through 35-9-208] do not prevent the shareholders from having an all-inclusive, buy-out agreement. See section 14(f) [35-9-205(6)]. An attorney drafting such an agreement, however, may use the provisions of sections 14 through 17 [35-9-205 through 35-9-208] as the basis of the agreement, making any necessary additions and modifications. The procedure may substantially reduce the amount of drafting required.

2. REDEMPTION PROBLEMS

The ability of a corporation to redeem its shares is subject to legal limitations. Section 6.40 of the revised Model Business Corporation Act [35-1-711 (now repealed)] sets forth a clear set of principles dealing with permissible redemptions of shares. In states that have not adopted section 6.40 [35-1-711 (now repealed)], however, the rules vary in many respects. Some states apply the same limitations to redemptions that apply to dividends. Some, however, apply different tests. The result is that a wide variety of insolvency and surplus tests, sometimes in combination, exist. If corporate indebtedness is incurred in connection with a redemption, further it is often unclear in states that have not adopted section 6.40 [35-1-711 (now repealed)] whether the applicable test must be met at the time the transaction is entered into, at the time payments are made, or at both times. The priority ranking of redemption related corporate debt is also unclear in many of these states.

3. TAX CONSIDERATIONS

Redemptions also involve complex tax considerations. Some redemptions, principally those that satisfy the requirements of sections 302 and 303 of the Internal Revenue Code, are taxed at capital gains rates rather than as dividends under section 301.

Sections 14 through 17 [35-9-205 through 35-9-208] are designed to provide flexibility to permit the affected parties to negotiate a purchase scheme that takes tax considerations into account. For example, under section 15(d) [35-9-206(4)], a portion or all of the purchase of the decedent's shares may, with shareholder approval, be allocated to the remaining shareholders or to third parties. This provides the framework by which the interested parties may allocate the shares to minimize the corporate law and tax problems discussed above. If an acceptable allocation cannot be agreed upon, the selling shareholder may, under section 16 [35-9-207], reject the offer made by the corporation and file a petition requesting the court to compel a purchase. In framing its decree, the court may consider the problems discussed here. The court may also, under section 16(c) [35-9-207(3)], modify its decree on the basis of legal and financial constraints.

Flexibility to deal with other tax problems is also built into sections 14 through 17 [35-9-205 through 35-9-208]. If certain conditions are met, payment of the estate tax on the deceased shareholder's estate may be deferred for up to 15 years under section 6166 of the Internal Revenue Code, and interest on the deferred tax will be assessed at a rate considerably lower than the normal rate applicable to late payments. A redemption keyed into maximum use of these provisions may in appropriate cases be quite advantageous to both the estate of the deceased shareholder and to the corporation. Nothing in these sections prohibit [sic] the estate of the deceased shareholder and the corporation from working out a redemption plan with the aid of tax and corporate counsel.

An additional tax problem is to assure that the price set for shares in a buy-out agreement will be accepted for tax purposes as the value of the shares. Tax counsel should be consulted to determine what adjustments, if any, will be necessary to achieve this result under a section 14 [35-9-205] buy-out agreement.

4. MODIFICATION OF STATUTORY SCHEME

Sections 14(b) and (c) [35-9-205(2) and (3)] permit the modification of the provisions of sections 14 through 17 [35-9-205 through 35-9-208] by a two-thirds vote of all the shares. Section 14(d) [35-9-205(4)] provides that a shareholder who votes against a modification that terminates or substantially alters buy-out rights previously granted him under these sections has dissenters' rights to obtain the fair value of his shares. Authorization of dissenters' rights when statutory buy-out rights are materially altered represents a compromise between requiring unanimous approval by all interested persons for the alteration and requiring less than unanimous approval but providing no statutory remedy for those opposed to the termination whose rights are adversely affected.

Compiler's Comments

2019 Amendment: Chapter 271 in (4) near middle substituted "entitled to appraisal rights under Title 35, chapter 14, part 13" for "entitled to dissenters' rights under 35-1-826 through 35-1-839". Amendment effective June 1, 2020.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In (4) substituted "35-1-826 through 35-1-839" for "35-1-810 and 35-1-812". Amendment effective January 1, 1992.

Source: This section is derived from section 14 of the ABA Model Statutory Close Corporation Supplement.

35-9-206. Exercise of compulsory purchase right.

Official Comments

Section 15 [35-9-206] sets out the mechanics of exercising the buy-out option. The procedures are similar to those in section 12 [35-9-203] relating to third-party offers. Like section 12 [35-9-203], this section requires that the selling shareholder offer all of his shares for sale on the premise that a shareholder desiring to cash out his interest in the corporation ought to divest himself of all his equity interest in the business. If fewer than all his shares are offered, the shareholder may pursue his rights, if any, under the corporation's share transfer restrictions.

Compiler's Comments

Source: This section is derived from section 15 of the ABA Model Statutory Close Corporation Supplement.

35-9-207. Court action to compel purchase.

Official Comments

The rationale for a judicial proceeding to determine the fair value of shares and other terms of the buy-out is explained in the Official Comment to section 15 [35-9-206]. The power of the court under section 17 [35-9-208] to allocate all costs and counsel fees incurred in the suit should provide an adequate incentive for both sides to act in good faith. No court action will be necessary, however, if the buy-out price and other terms are established pursuant to a written agreement among the shareholders or provisions in the articles of incorporation or bylaws. See section 15(e) [35-9-606(5)].

If a suit to determine the fair value of shares is brought, the court has discretion to include in its order any conditions it feels are justified on the basis of the financial and other needs of the selling shareholder and of the purchaser. The court, for example, may authorize an installment sale. The order may include a provision for interest and may require collateral to secure the unpaid installments.

If the purchase is not consummated or the purchasers default, the shareholder may petition for dissolution of the corporation. The court may deny the petition for good cause shown. The proceeding, however, affords the corporation an opportunity to be heard on the matter and an opportunity to avoid dissolution. Mandatory dissolution in the event the offered shares are not purchased provides a strong incentive for the corporation and the remaining shareholders either to purchase the shares or to find another purchaser. Presumably, the corporation and other shareholders would refuse to purchase if the corporation's financial prospects were bleak. If this is the case, then dissolution may be the appropriate solution. Under section 15 [35-9-206] the other shareholders are given reasonable time to come up with a purchasing group and the court has power to authorize an installment purchase and any other terms that are necessary to enable the purchasing group to finance the purchase without undue financial strain on the corporation or other purchasers.

Compiler's Comments

2007 Amendment: Chapter 240 in (1) at end substituted "in Lewis and Clark County" for "its registered office". Amendment effective October 1, 2008.

Source: This section is derived from section 16 of the ABA Model Statutory Close Corporation Supplement.

35-9-208. Court costs and other expenses.

Official Comments

See the Official Comment to section 16 [35-9-207].

Compiler's Comments

Source: This section is derived from section 17 of the ABA Model Statutory Close Corporation Supplement.

Part 3
Regulation and Operation

35-9-301. Shareholder agreements.

Official Comments

This section authorizes the shareholders to make any agreement they wish regulating the business of the corporation and their relationship to one another and to the corporation. Examples of provisions that may be included in an agreement are:

(1) The management of the business and the affairs of the corporation in whole or part may be by or under the direction of all the shareholders of the corporation or by or under the direction of one or more shareholders or third parties selected by the shareholders.

(2) One or more shareholders may be given power to dissolve the corporation at will or upon the occurrence of a specified event or contingency.

(3) The manner of exercising or dividing voting power by the shareholders and directors may be established, and the use of director as well as shareholder proxies may be authorized.

(4) The terms and conditions of employment of any officer or employee by the corporation may be established, regardless of the length of employment.

(5) The identity of the directors and officers of the corporation may be established.

(6) The payment of dividends or division of profits may be established.

(7) Issues as to which the shareholders or directors are deadlocked may be made subject to arbitration, or arbitration may be required for any issue of disagreement between a shareholder in his capacity as a shareholder, director, officer, or employee and the corporation, or the other shareholders.

All the shareholders must enter into the agreement and, if the agreement specifies that the corporation is not to have a board of directors or that one or more shareholders is to have a special right to dissolve the corporation, the articles of incorporation must include appropriate language authorizing these provisions. See sections 21 and 33 [35-9-302 and 35-9-404].

A shareholder agreement is valid and enforceable under this section even if it, in effect, permits the business to be operated essentially as a partnership without a board of directors. See subsection (b) [subsection (2)]. Close corporations in which most or all of the shareholders are employees of the corporation are often referred to as "incorporated partnerships." This section gives legal sanction to the customary arrangements made by the shareholders of these corporations. Section 25 [35-9-306] reinforces this concept by providing that shareholder limited liability is to be recognized in spite of an agreement that the corporation is to be operated essentially as a partnership.

This Supplement does not deal with the effect of a shareholder agreement on the tax status of the corporation. In some circumstances the agreement may result in the taxation of the business as a partnership. See Treas. Regs. §§301.7701-1 through -3 (1960).

The requirement of unanimity for adoption and amendment is based on the unusual nature of an agreement that so radically alters the normal corporate structure.

Subsection (h) [subsection (8)] preserves the right of shareholders to enter into any other type of shareholder voting agreement or voting trust or similar agreement that is authorized in the state's general business corporation or professional corporation statutes. These statutes do not ordinarily require unanimous approval by the shareholders but in general they do not authorize as much flexibility, particularly with respect to restrictions on the normal powers of directors, as is permitted under this section. They also often contain time limitations and other restrictions that may be undesirable. See, e.g. MBCA section 7.30 [35-1-508 (now repealed)] (voting trust is valid for 10 years).

The shareholders of a statutory close corporation may choose to operate with or without a board of directors. Section 21 [35-9-302] deals specifically with the requirements for making this election and the legal consequences of operating without a board of directors. If the corporation has a board of directors, any responsibilities required to be exercised by the board of directors may be delegated to one or more of the shareholders or to third parties selected by the shareholders.

If the shareholders exercise the traditional management rights and duties required by statute to be exercised by the board of directors or have delegated these rights and duties to others, they also assume the same liability as would otherwise be imposed on the directors for failure to exercise these rights or to carry out those duties in an appropriate fashion. The shareholders who assume the duties of directors would, however, be eligible for indemnification under chapter 8E of the Revised Model Act [35-1-414 (now repealed)]. See the Official Comment to section 21 [35-9-302]. If the corporation has a board of directors, the directors are responsible for the appropriate exercise of any management rights they have power to exercise and would be liable for their failure to carry out their duties.

This section is derived from similar provisions in the Maryland and Texas close corporation statutes with stylistic changes.

Compiler's Comments

Source: This section is derived from section 20 of the ABA Model Statutory Close Corporation Supplement.

Case Notes

Error in Modification of Rate for Legal Work: The partnership agreement of a limited partnership included a limitation on the general partners' ability to incur legal expenses, but provided that two of the partners could be employed to perform legal services for the partnership, and limited compensation to reasonable hourly rates in an amount not to exceed a total of $60,000 a year without approval. A dispute between partners resulted in a claim that the attorneys had charged excessive rates of $225 an hour and thus should be removed as directors. The District Court found that the attorneys overcharged and required repayment based on a reduced hourly rate. The Supreme Court disagreed and reversed. The contract language clearly allowed for employment of the attorneys, and the partnership was aware in advance of the attorneys' hourly rate. The fees were reasonable given the complexity of the specialized work and the fact that other attorneys in that field charged even higher rates. The District Court erred in modifying the rate for legal work. Sletteland v. Roberts, 2000 MT 382, 304 M 21, 16 P3d 1062, 57 St. Rep. 1639 (2000).

Declaratory Judgment Action by Ranching Corporation Not Action for Full Value of Minority Shares: McCann Ranch, Inc. (MRI), brought a declaratory judgment action against Sharon in order to determine the value of her 600 minority shares for purposes of the dissolution of her marriage. Sharon argued that she should have been paid the full value of her shares because certain actions of MRI were illegal, oppressive, fraudulent, or unfairly prejudicial. The Supreme Court held that the actions of MRI in paying outstanding corporate debts, ceasing payment of dividends, and leasing corporate property did not constitute illegal, oppressive, fraudulent, or unfairly prejudicial acts. The Supreme Court also held that the action brought by Sharon was not pursuant to 35-9-501 because it was brought as a declaratory judgment action by the corporation. McCann Ranch, Inc. v. Quigley-McCann, 276 M 205, 915 P2d 239, 53 St. Rep. 349 (1996).

35-9-302. Elimination of board of directors.

Official Comments

This section permits a statutory close corporation to dispense with a board of directors if a statement to that effect is included in its articles of incorporation. See the Official Comment to section 3 [35-9-103]. It also sets out the consequences of this election. It is derived from the Maryland close corporation statute.

The shareholders of a statutory close corporation operating without a board of directors have the legal liability imposed by law on directors for managing the business and affairs of the corporation. They may appoint one or more persons to perform their duties but they are collectively liable for any mismanagement. They also have the usual duties of directors and must either hold a meeting or join in a written consent to initiate or to approve action required by statute to be taken by directors. If this option is exercised, it also is not necessary to call for an organizational meeting of directors or to hold other directors' meetings; the statutory requirements may be fulfilled by shareholders' meetings.

One difference between this section and the Maryland provision and the provisions found in the statutes of other states that have followed the Maryland model is found in subsection (c)(5) [subsection (3)(e)], authorizing "designated directors" to satisfy a party dealing with the corporation who requests that certain documents be signed or approved by "directors." Some banks and creditors have in the past refused to accept documents that do not meet specified corporate formalities. This subsection creates an admittedly artificial but practical method of satisfying this objection. The designated directors do not expose themselves to additional liability by signing documents as designated directors.

Subsection (c)(2) [subsection (3)(b)] provides that the shareholder vote on action normally requiring director approval is tallied in the same manner as at any meeting of shareholders, i.e. the vote is tallied by shares rather than per capita by individual shareholders. This rule may be changed by an appropriate provision in the articles of incorporation. For example, if the articles of incorporation so state, shareholders may vote on a one-vote-per-person basis (as is the normal rule for directors' votes) rather than the one-vote-per-share rule applicable to shareholders. The shareholder voting rule is utilized as the standard rule because it is the option most likely to be chosen. A weighted voting plan that gives one or more shareholders either a general veto power or the power to veto in designated cases is also permissible. If a corporation has different classes or series of shares with voting rights or the corporate statutes grant voting rights to all classes or series of shares on a particular issue, either together or as separate voting groups, the requisite vote of the various classes or series of shares must be obtained to validate the transaction. The vote under subsection (c)(2) [subsection (3)(b)] only satisfies any requirement for director approval of proposed action.

Although unanimous approval is necessary to elect to dispense with a board of directors, the election can be terminated under subsection (d) [subsection (4)] by a two-thirds vote of all shares. Operating without a board of directors is such a radical departure from traditional corporate law that it should not be undertaken unless all the shareholders agree because additional liabilities may be incurred as a result of the election. Terminating the election, however, reinstates the statutory requirements for a board of directors; and a two-thirds vote, which is the voting standard used in this Supplement for most fundamental structural changes, seems sufficient. A corporation with 50 or fewer shareholders [25 in Montana] that elects not to have a board of directors under section 8.01 of the Revised Model Act [35-1-401, 35-1-515 (both repealed)], however, may make and terminate the election under that statute by majority vote.

If a corporation without a board of directors terminates its status as a statutory close corporation, it must immediately elect directors unless it has 50 or fewer shareholders [25 in Montana] and chooses to operate without a board under MBCA § 8.01 [35-1-401, 35-1-515 (both repealed)].

Compiler's Comments

2019 Amendment: Chapter 271 in (4) at end after substituted "35-14-801" for "35-1-416". Amendment effective June 1, 2020.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: At end of (4) substituted "35-1-416" for "35-1-401 or 35-1-515". Amendment effective January 1, 1992.

Source: This section is derived from section 21 of the ABA Model Statutory Close Corporation Supplement.

35-9-303. Bylaws.

Official Comments

The purpose of bylaws is to provide regulations for the management of a corporation. Business corporation statutes universally require that a corporation adopt bylaws. Very few, however, specify more than a few mandatory provisions that must be included in the bylaws. For example, under the MBCA, the mandatory requirements are: (1) the time and place of shareholder meetings (section 7.01) [35-1-501 (now repealed)]; (2) the number of directors (section 8.03) [35-1-402 (now repealed)]; (3) the notice to be given of directors' meetings (section 8.22) [35-1-404 (now repealed)]; and (4) the time, method of election, and authority of the officers (sections 8.40 and 8.41) [35-1-410 (now repealed)]. Moreover, under section 2.06 [35-1-214 (now repealed)] any provision required or permitted to be in the bylaws may be placed in the articles of incorporation.

Since the type of shareholder agreement contemplated by section 20 [35-9-301] includes much of the information normally included in bylaws, requiring the adoption of bylaws in many cases involves unnecessary duplication. This is particularly true in closely held corporations in which most or all of the investors are active in the business. These corporations normally operate on an informal basis. The highly structured formalities in typical bylaws, although necessary in larger corporations with numerous shareholders, can be cumbersome when imposed on closely held corporations.

This section gives a statutory close corporation the option to dispense with bylaws, if the matters required by statute to be included in bylaws are contained in either a section 20 [35-9-301] shareholder agreement or in the articles of incorporation. Although this represents a break with tradition, it is generally consistent with the "incorporated partnership" concept (see the Comment to section 20 [35-9-301]) and makes certain that all the information legally required to be in bylaws will be readily accessible to the shareholders.

Compiler's Comments

2019 Amendment: Chapter 271 in (2) at end substituted "35-14-206" for "35-1-236". Amendment effective June 1, 2020.

1991 Amendment: At end of (2) substituted "35-1-236" for "35-1-214". Amendment effective January 1, 1992.

Source: This section is derived from section 22 of the ABA Model Statutory Close Corporation Supplement.

35-9-304. Annual meeting.

Official Comments

This section, which is derived from the Maryland close corporation statute, requires that a statutory close corporation establish a date for an annual shareholders' meeting but provides that the meeting need not be held unless demanded. Under the Revised Model Business Corporation Act and most state corporation statutes, an annual meeting appears to be mandatory. See the Official Comment to MBCA section 7.01 [35-1-501 (now repealed)].

Compiler's Comments

Source: This section is derived from section 23 of the ABA Model Statutory Close Corporation Supplement.

35-9-305. Holding more than one office — execution of documents in more than one capacity.

Official Comments

This section, which is derived from the Maryland close corporation statute, is designed to facilitate the authentication of documents in a statutory close corporation. Many small corporations have only one shareholder or one officer.

Compiler's Comments

1991 Amendment: Deleted former (1) that allowed an individual to hold more than one office of a statutory close corporation under certain conditions, after "acknowledge" inserted "or verify", and after "acknowledged" inserted "or verified"; and made minor changes in style. Amendment effective January 1, 1992.

1989 Amendment: Inserted (1) allowing one person to hold all offices; in (2), at beginning, deleted "Notwithstanding any law to the contrary" and in two places, after references to acknowledgment, deleted references to verification; and made a minor change in style.

Source: This section is derived from section 24 of the ABA Model Statutory Close Corporation Supplement.

Montana Changes: See 1989 amendment note.

35-9-306. Limited liability.

Official Comments

The purpose of this section is to eliminate the possible argument that the shareholders in a statutory close corporation are individually liable for the debts and torts of the business because the corporation did not follow the classical model of a corporation. Pursuant to sections 20, 21, and 33 [35-9-301, 35-9-302, and 35-9-404], a statutory close corporation may in effect function like a partnership, although legally the business is still a corporation. This section does not prevent a court from "piercing the corporate veil" of a statutory close corporation if the circumstances should justify imposing personal liability on the shareholders were the corporation not a statutory close corporation. It merely prevents a court from "piercing the corporate veil" because it is a statutory close corporation.

The section is derived from the California close corporation provisions.

Compiler's Comments

Source: This section is derived from section 25 of the ABA Model Statutory Close Corporation Supplement.

Law Review Articles

The ABA Model Statutory Close Corporation Act: A New Opportunity for "Made in Montana" Corporations, Bahls & Quist, 49 Mont. L. Rev. 66 (1988).

Part 4

Reorganization and Dissolution

35-9-401. Merger — share exchange — sale of assets.

Official Comments

Section 31 [35-9-402] requires a minimum two-thirds vote of every class or series of shares whether or not otherwise entitled to vote to terminate close corporation status. Each class or series is entitled to vote as a separate voting group. Section 30 [35-9-401] imposes the same voting requirement in transactions that have the effect of terminating a corporation's status as a statutory close corporation.

In addition, under subsection (a)(2) [subsection (1)(b)], the shareholders of a corporation that will become a statutory close corporation in a merger or share exchange must approve the transaction by the same minimum two-thirds vote. This is consistent with section 3(b) [35-9-103(2)] which requires that an amendment to the articles of incorporation that results in an existing corporation becoming a statutory close corporation also be approved by a two-thirds vote.

The exceptions to shareholder approval of mergers or share exchanges for subsidiary mergers and some other types of transactions (in MBCA chapter 11) [35-1-801 through 35-1-807 (all repealed)] do not apply to statutory close corporations since a shareholder vote is required in all circumstances where statutory close corporation status is elected or terminated.

Shareholders of a statutory close corporation who vote against the merger, share exchange, or sale not in the regular course of business of all or substantially all the assets have dissenters' rights under MBCA chapter 13 [35-1-810, 35-1-812 (both repealed)].

Section 31(b) [35-9-402(2)] requires that a sale of all or substantially all the assets of a corporation not in the regular course of business be approved by a two-thirds vote of all classes or series of shares, voting as separate voting groups, whether or not they are otherwise entitled to vote. Chapter 12 of the Revised Model Business Corporation Act [35-1-808, 35-1-809 (both repealed)] does not require a vote by voting groups on such a sale (unless otherwise required by the articles of incorporation or by action of the board of directors) and limit the right to vote to shareholders who are entitled to vote generally.

Compiler's Comments

Source: This section is derived from section 30 of the ABA Model Statutory Close Corporation Supplement.

35-9-402. Termination of statutory close corporation status.

Official Comments

Sections 31 and 32 [35-9-402 and 35-9-403] deal with issues that arise when it is decided to terminate a corporation's status as a statutory close corporation.

Termination is accomplished by amendment of the articles of incorporation to eliminate the special designation required by section 3 [35-9-103]. This amendment must be approved by the same vote (two-thirds) that is necessary to elect close corporation status (unless the articles specify a higher vote); and shareholders who vote against the termination have dissenters' rights. This is consistent with the provisions in section 3(b) [35-9-103(2)] for election by an existing corporation to become a statutory close corporation.

If the status of a statutory close corporation that is operating without a board of directors is to be terminated, in addition to amending the articles of incorporation to delete the reference to the statutory close corporation election, the statement that it has no board of directors must also be deleted, and the corporation must immediately elect a board of directors. Or, if MBCA section 8.01(c) [no similar provision in Montana] is applicable, the corporation must amend its articles of incorporation to describe who will perform some or all of the duties of the board of directors under that section.

In the absence of agreement upon rights and duties of the shareholders, the corporation upon termination automatically becomes subject to the state's general business corporation statute, or professional corporation act if the corporation was organized as a professional corporation. Further, except for transfer restrictions under section 11 [35-9-202] and authority to operate without a board of directors under MBCA section 8.01(c) [no similar provision in Montana], any existing rights of the shareholders established by agreement (UNIFORM COMMERCIAL CODE § 1-201(3) [30-1-201(3)]) between the shareholders or with the corporation and any rights granted to the shareholders in the articles of incorporation that are valid under the general business or professional corporation acts remain in effect.

If the shareholders desire to have transfer restrictions applicable under section 11 [35-9-202] to continue after termination of statutory close corporation status, the restrictions must meet all requirements specified in MBCA section 6.27 [35-1-617 (now repealed)], or analagous section of the state's general corporation statute. An alternative method of continuing the section 11 [35-9-202] transfer restrictions after termination is to include a provision in the articles of incorporation that section 11(b)(7) [35-9-202(2)(g)] (which exempts transfers made after termination of statutory close corporation status from the statutory transfer restrictions) does not apply. This eliminates the need to draft a complete set of transfer restrictions. To be binding on third parties, however, all new shares issued after the termination is effective must contain a notice meeting the requirements of MBCA section 6.27(b) [35-1-617(1) (now repealed)] (or analagous provisions in state corporation statutes) and other applicable law. See UNIFORM COMMERCIAL CODE § 8.204 [30-8-204, now repealed]. The notice required as to shares of statutory close corporations by section 10 [35-9-201] is no longer appropriate, although it may be effective notice with respect to all shares outstanding at the time of termination.

If the Revised Model Business Corporation Act and the Model Professional Corporation Supplement have been enacted, most of the special control and distribution arrangements among the shareholders and the optional provisions that may be included in the articles of incorporation are not affected by the termination. For example, if sections 14 through 17 [35-9-205 through 35-9-208] have been elected, the buy-out purchase option at the death of a shareholder continues to apply, unless the articles of incorporation are amended to terminate the option. See the Official Comment to section 14 [35-9-205]. Some provisions, however, may be of doubtful validity after termination. One that may be in this category is a provision in the articles of incorporation giving one or more minority shareholders the right to dissolve the corporation as authorized by section 33 [35-9-404]. At the time of termination, all relevant documents relating to the corporation and the shareholders should be carefully reviewed, and where necessary revised. This Supplement gives some automatic protection by providing in section 32(b) [35-9-403(2)] that the special control and contractual arrangements automatically continue in effect unless they are invalid under other applicable statutes or case law.

Compiler's Comments

2019 Amendment: Chapter 271 in (3) at end substituted "assert appraisal rights under Title 35, chapter 14, part 13" for "assert dissenters' rights under 35-1-826 through 35-1-839". Amendment effective June 1, 2020.

1991 Amendment: In (1), in second sentence after "must", deleted "either comply with 35-1-401 or 35-1-515 or". Amendment effective January 1, 1992.

Source: This section is derived from section 31 of the ABA Model Statutory Close Corporation Supplement.

35-9-403. Effect of termination of statutory close corporation status.

Official Comments

See the Official Comment to section 31 [35-9-402].

Compiler's Comments

Source: This section is derived from section 32 of the ABA Model Statutory Close Corporation Supplement.

35-9-404. Shareholder option to dissolve corporation.

Official Comments

The purpose of this section is to give shareholders in a statutory close corporation, if they so elect, basically the same power to dissolve the business as general partners have under the Uniform Partnership Act. The section applies only if it is elected in the corporation's original or amended articles of incorporation. The right may be given to a single shareholder or to any group of shareholders and may be exercisable at will or restricted to certain designated circumstances. Rights under this section are in addition to other rights a shareholder may have under the state's general business corporation or professional corporation acts or this Supplement [Title 35, chapter 9, MCA] to dissolve the corporation.

This section gives considerable leverage to the shareholder or group of shareholders having the power to dissolve over the other shareholders. It should therefore be utilized with caution. Investors may wish to alter the statutory language to provide that the remaining shareholders have an option to purchase the shares of the shareholder(s) giving notice of dissolution under this section.

This section is generally patterned after the Delaware statute.

Compiler's Comments

2019 Amendment: Chapter 271 in (1) at end substituted "35-14-1401 through 35-14-1405" for "35-1-931 through 35-1-935". Amendment effective June 1, 2020.

1991 Amendment: At end of (1) substituted "35-1-931 through 35-1-935" for "35-1-911 and 35-1-912". Amendment effective January 1, 1992.

Source: This section is derived from section 33 of the ABA Model Statutory Close Corporation Supplement.

Part 5
Shareholder Protection

Part Case Notes

Lawsuit by Shareholder Causing Damages Considered Breach of Fiduciary Duty of Care: Sletteland brought a suit against two other corporate shareholders for charging excessive attorney fees and seeking their removal as corporate directors. The District Court held that the fees were excessive, but found no grounds for removal. The other shareholders filed a counterclaim against Sletteland, alleging that he breached his fiduciary duty in bringing the lawsuit because the timing of the suit caused refinancing of a project to fail, resulting in damage to the corporation and to other shareholders. The District Court agreed, and both parties appealed their respective issues. The Supreme Court reversed on the issue of excessive fees, but affirmed on the issue of breach of fiduciary duty. The fiduciary duty between shareholders of a close corporation is one of utmost good faith and loyalty. Sletteland admittedly knew of the refinancing and, as an attorney and investment banker, also knew the effect that a lawsuit alleging misconduct by board members would have on a refinancing effort. In fact, it appeared that the suit was brought to specifically derail the refinancing. Sletteland was the person who determined the timing of the suit, which was filed immediately before the individuals involved in the refinancing were to meet for discussions, and when asked to withdraw the suit so refinancing could conclude, he refused to do so. Sletteland did not use the care that an ordinarily prudent person would use in a similar situation, resulting in the breach of fiduciary duty. The Supreme Court also affirmed the award of damages. Although future damages could not be calculated exactly in this case, the District Court did not abuse its discretion in basing its calculations on expert testimony of a well-known regional economist. Sletteland v. Roberts, 2000 MT 382, 304 M 21, 16 P3d 1062, 57 St. Rep. 1639 (2000).

Fiduciary Duty Between Shareholders in Close Corporation When No Other Type of Relationship Exists: The fiduciary duty between stockholders of a close corporation is one of utmost good faith and loyalty. However, the controlling group should not be stymied by a minority stockholder's grievances if the controlling group can demonstrate a legitimate business purpose and the minority stockholder cannot demonstrate a less harmful alternative. If called on to settle a dispute between the stockholders, the court must weigh the legitimate business purpose, if any, against the practicability of a less harmful alternative. Daniels v. Thomas, Dean & Hoskins, Inc., 246 M 125, 804 P2d 359, 47 St. Rep. 2293 (1990), citing Donahue v. Rodd Electrotype Co. of New England, Inc., 328 NE 2d 505 (Mass. 1975), and Wilkes v. Springside Nursing Home, Inc., 353 NE 2d 657 (Mass. 1976), and distinguishing Skierka v. Skierka Bros., Inc., 192 M 505, 629 P2d 214 (1981), Deist v. Wachholz, 208 M 207, 678 P2d 188 (1984), and Dunfee v. Baskin-Robbins, 221 M 447, 720 P2d 1148 (1986).

In Warren v. Campbell Farming Corp., 2011 MT 324, 363 Mont. 190, 271 P.3d 36, the Montana Supreme Court, in answering a certified question from the Tenth Circuit Court of Appeals, revisited the Daniels test and concluded that the Daniels test does not apply to claims involving director conflict of interest transactions. However, the Daniels test does apply to minority shareholders' claims of breach of fiduciary duties against majority shareholders.

35-9-501. Court action to protect shareholders.

Official Comments

1. INTRODUCTION

Sections 40 through 43 [35-9-501 through 35-9-504] are derived from similar provisions in the California, Michigan, Minnesota, New Jersey, and South Carolina statutes, which in turn are derived from former section 210 of the 1948 English Companies Act (reenacted as section 75 of the 1980 English Companies Act). There are two major differences between these statutes and sections 40 through 43 [35-9-501 through 35-9-504]: (1) the statutes, either specifically or by implication, provide that a shareholder may obtain relief only if he has statutory grounds therefor, whereas section 43 [35-9-504] does not tie relief either to a suit to compel dissolution or to the establishment of grounds for dissolution; and (2) the range of relief available to the court is spelled out in greater detail.

The primary danger in granting relief for oppression and related conduct by dissolution is that the remedy is drastic and courts have usually refused to order dissolution of a solvent corporation, except in extreme cases of fraudulent conduct. Moreover, even though authority may exist to grant relief other than dissolution, courts have often been reluctant to grant any relief unless the fact situation itself justifies dissolution. This approach makes the grounds for relief too narrow to protect in an adequate fashion the rights of minority shareholders. At the same time the threat of dissolution gives minority shareholders a powerful weapon to hold over the head of the majority. Under this Supplement [Title 35, chapter 9, MCA], dissolution is one form of relief that may be ordered by the court, but it is appropriate only as a last resort after other possibilities of resolving the dispute have failed. If a shareholder is actually seeking liquidation of the corporation, he may bring an action for dissolution under the state's general business corporation act (assuming he qualifies to bring the proceeding) or under the option-to-dissolve provisions of section 33 [35-9-404].

Although sections 40 through 43 [35-9-501 through 35-9-504] probably will be invoked most frequently by minority shareholders, the ground for relief described in section 40(a)(2) [35-9-501(1)(b)] may be used by the holders of the majority of shares to seek relief from deadlocks created by veto rights given minority shareholders which threaten the corporation's continued existence. Moreover, even in suits brought by minority shareholders, the court has power under section 42 [35-9-503] to order the petitioning shareholders to sell their shares to the corporation or to the remaining shareholders, even if this is not the relief requested.

Relief available under sections 40 through 43 [35-9-501 through 35-9-504] is circumscribed to minimize the danger of abuse by shareholders. No relief of any kind may be ordered unless the court affirmatively finds that one or more of the specific conditions listed in section 40(a) [35-9-501(1)]—fraud, oppression, unfairly prejudicial conduct, deadlock, or grounds for involuntary dissolution—exist. The petitioner has the burden of proof on this issue. The court may award expenses and counsel fees to either side under section 41(b) [35-9-502(2)] in order to discourage or punish the bringing of harassment suits. Finally, if the complaining shareholder has agreed to arbitrate the dispute in question or to resolve it in some other nonjudicial manner, these remedies must be exhausted under section 40(c) [35-9-501(3)] before a suit under this section may be filed.

2. GROUNDS FOR RELIEF

Only shareholders of record or beneficial owners of shares held by a voting trust may bring an action under section 40(a) [35-9-501(1)] (see the definition of "shareholder" in MBCA section 1.40 [35-1-102 (now repealed)]). This parallels the limitations imposed on shareholder derivative proceedings by section 7.40 of the MBCA [35-1-514 (now repealed)]. Relief may be granted if any of the three categories of circumstances specified exist.

Section 40(a)(1) [35-9-501(1)(a)] provides relief from oppression and related conduct that adversely affects a minority shareholder in any relationship with the corporation. Attempted squeeze-outs in close corporations often involve removing a shareholder from his various offices or diminishing his compensation. The subsection makes clear that relief is not limited to those situations in which the value of the shareholder's share interest has been adversely affected.

No attempt has been made to define oppression, fraud, or unfairly prejudicial conduct. These are elastic terms whose meaning varies with the circumstances presented in a particular case, and it is felt that existing case law provides sufficient guidelines for courts and litigants. See, e.g., Annot., "What amounts to 'oppressive conduct' under statute authorizing dissolution of corporation at suit of minority stockholders," 56 A.L.R.3d 358 (1974).

Section 40(a)(2) [35-9-501(1)(b)] allows relief when the corporation is deadlocked. Whether a deadlock is created by majority or minority shareholders is immaterial and either majority or minority shareholders may claim relief under this subsection. Relief may be granted even though the corporation's financial condition is not threatened with irreparable injury if the court finds that the interest of all the shareholders is being damaged by the deadlock.

Section 40(a)(3) [35-9-501(1)(c)] permits a shareholder to claim relief under this section if grounds for involuntary dissolution exist (see MBCA section 14.30 [35-1-921 (now repealed)]). By filing an action under this section, a greater range of relief is made available to the shareholder. For example, the petitioning shareholder may not wish the corporation dissolved, even though grounds for dissolution exist.

3. PREREQUISITES TO GRANTING RELIEF

Under section 40(c) [35-9-501(3)], nonjudicial remedies that the petitioning shareholder has agreed to seek must be exhausted before a suit may be brought under this section. Arbitration clauses covering a wide variety of intracorporate disputes are commonly included in shareholder agreements. If a dispute is covered by an arbitration agreement, the shareholder must submit the claim to arbitration before filing suit under this section and the right to file under this section after the arbitration proceeding is commenced depends on the preclusive effect of the arbitration under state law independent of the corporation statutes.

The requirement in section 40(d) [35-9-501(4)] that a shareholder who has dissenters' rights with respect to a transaction must file suit challenging the transaction under this section before the time he is required to perfect his dissenters' rights is designed to prevent a shareholder who has foregone his dissenters' rights from filing suit under this section to prevent a proposed transaction from being consummated. If the complaining shareholder has not taken timely action to perfect his dissenters' rights, he is relegated to whatever other rights might be available to him under state or federal law. See, e.g. Official Comment 2 to MBCA section 13.02 [35-1-810 (now repealed)]. If the shareholder does file a timely proceeding under this section, the court must first determine whether relief under this section is warranted. If the court finds that a share purchase is the appropriate remedy, the proceeding should be treated as a valuation proceeding in a dissenters' rights case and consolidated with any other similar dissenters' rights proceedings involving the same transaction.

Section 40(e) [35-9-501(5)] makes clear that the remedies available under this and sections 41 through 43 [35-9-502 through 35-9-504] are cumulative and are in addition to any other remedies the petitioner may have, except as otherwise provided in sections 40(c) and 40(d) [35-9-501(3) and 35-9-501(4)].

Compiler's Comments

2019 Amendment: Chapter 271 in (1)(c) at end substituted "35-14-1430" for "35-1-938"; in (4) near beginning substituted "appraisal rights" for "dissenters' rights"; and in two places substituted "Title 35, chapter 14, part 13" for "35-1-826 through 35-1-839". Amendment effective June 1, 2020.

2007 Amendment: Chapter 240 in (2) at end of first sentence substituted "in Lewis and Clark County" for "its registered office"; and made minor changes in style. Amendment effective October 1, 2008.

1991 Amendment: At end of (1)(c) substituted "35-1-938" for "35-1-921"; and in (4), in two places, substituted references to 35-1-826 through 35-1-839 for references to 35-1-810 and 35-1-812. Amendment effective January 1, 1992.

Source: This section is derived from section 40 of the ABA Model Statutory Close Corporation Supplement.

Case Notes

Exchange of Corporate Property Not Contemplated in Stockholder Agreement — Minority Shareholder Entitled to Notice of Dissenters' Rights: The provisions of a stockholders' agreement dealt with procedures for the sale and transfer of shares but did not contemplate an exchange transaction of all corporate property or a fundamental change in the corporate form. Therefore, the Montana Business Corporation Act, Title 35, ch. 1 (now repealed and replaced by Title 35, ch. 14), including provisions giving rise to dissenters' rights, rather than the provisions of the stockholders' agreement itself, controlled the resolution of the exchange transaction. Under the Act, a dissenting shareholder may demand that the corporation buy back that shareholder's shares at fair value if the corporation takes an action that fundamentally alters the character of the shareholder's investment. Because the corporation president and majority shareholder exchanged virtually all the corporate property other than in the ordinary course of business, all minority shareholders should have been notified of the proposed exchange or should have been allowed to vote on the proposal at a stockholders' meeting and should have been notified of dissenters' rights within 10 days after the exchange. The minority shareholders' mere failure to object to the exchange did not constitute a waiver of their dissenters' rights because they were never given notice of their right to dissent. Hansen v. 75 Ranch Co., 1998 MT 77, 288 M 310, 957 P2d 32, 55 St. Rep. 322 (1998).

Declaratory Judgment Action by Ranching Corporation Not Action for Full Value of Minority Shares: McCann Ranch, Inc. (MRI), brought a declaratory judgment action against Sharon in order to determine the value of her 600 minority shares for purposes of the dissolution of her marriage. Sharon argued that she should have been paid the full value of her shares because certain actions of MRI were illegal, oppressive, fraudulent, or unfairly prejudicial. The Supreme Court held that the actions of MRI in paying outstanding corporate debts, ceasing payment of dividends, and leasing corporate property did not constitute illegal, oppressive, fraudulent, or unfairly prejudicial acts. The Supreme Court also held that the action brought by Sharon was not pursuant to this section because it was brought as a declaratory judgment action by the corporation. McCann Ranch, Inc. v. Quigley-McCann, 276 M 205, 915 P2d 239, 53 St. Rep. 349 (1996).

Payment of Attorney Fees Not Required — Inclusion of Litigation Cost in Corporate Value Approved: McCann Ranch, Inc. (MRI), brought a declaratory judgment action against Sharon in order to determine the value of her 600 minority shares for purposes of the dissolution of her marriage. Sharon argued that the District Court erred in refusing to award her attorney fees and costs. The Supreme Court held that inasmuch as the action was a declaratory judgment action brought by the corporation, attorney fees were not payable. The Supreme Court noted that even if the action had been a minority shareholder action, award of attorney fees was discretionary. The District Court did not abuse its discretion because there was no "prevailing party" in the action. The Supreme Court also held that the District Court did not err in the calculation of MRI's litigation expenses for inclusion in the corporate assets prior to valuation of Sharon's shares because the expenses as valued by Sharon were not supported by the record. McCann Ranch, Inc. v. Quigley-McCann, 276 M 205, 915 P2d 239, 53 St. Rep. 349 (1996).

35-9-502. Ordinary relief.

Official Comments

The purpose of listing the types of relief available, in this section and in sections 42 and 43 [35-9-503 and 35-9-504], is to overcome the reluctance some courts have shown in the past to ordering anything other than dissolution, or possibly a buy-out. See, e.g., *Gruenberg v. Goldmine Plantation, Inc.,* 360 So.2d 884 (La. Ct. App. 1978); *Harkey v. Mobley,* 552 S.W.2d 79 (Mo. Ct. App. 1977); *White v. Perkins,* 213 Va.129, 189 S.E.2d 315 (1972). A court should have broad discretion to fashion the most appropriate remedy to resolve the dispute. What works in one case may not work in another. Detailed standards are not provided since they might encourage litigation and also unduly restrict the court's discretion. The dangers of including detailed standards, however, outweigh the advantages. Existing cases applying principles of equity, are, of course, precedents for the exercise of a judge's discretion under this section.

Although most close corporation statutes contain special provisions similar to sections 40(a)(6) and (7) [(sic) correct reference is apparently 35-9-502(1)(f) and (1)(g)], authorizing the appointment of custodians and provisional directors, the number of actual cases in which appointments will be the most appropriate remedy are probably few. Usually the threat of an outsider running the company or acting as a tie-breaker in a deadlock situation leads to a settlement of the controversy.

Compiler's Comments

Source: This section is derived from section 41 of the ABA Model Statutory Close Corporation Supplement.

35-9-503. Extraordinary relief — share purchase.

Official Comments

A court-ordered buy-out is a drastic remedy, particularly if the shareholder ordered to sell his shares does not wish to sell. For this reason section 42 [35-9-503] authorizes a share purchase order only if other relief short of liquidation will not, in the judge's opinion, resolve the dispute. If a buy-out ordered by the court is not consummated, however, an order dissolving the corporation is authorized. This may place pressure on the remaining shareholders to obey the order but also gives them the option of dissolution if they think the order is too onerous.

If the court orders a buy-out, it must also determine the fair value and other terms of the buy-out in accordance with subsection (b) [35-9-503(2)]. Fair value is to be determined under principles developed in dissenters' rights and other valuation cases. The court may require the selling shareholder to enter into a covenant not to compete and also may order an installment sale in order to protect the business and to minimize the financial strain on the purchasers. See also the Official Comment to section 14 [35-9-205].

This section permits the designated purchasers either to consummate the purchase or to permit the corporation to be dissolved. Presumably the remaining shareholders will elect to have the corporation dissolved if its economic prospects are bleak. Leaving the choice to the remaining shareholders is fairer than ordering dissolution without giving the remaining shareholders the opportunity to buy out the complaining shareholder or requiring the remaining shareholders to purchase the shares without giving them the option of voluntary dissolution (which they would not have unless they held sufficient voting shares to approve a dissolution).

If the remaining shareholders agree to comply with the court ordered buy-out, the sale operates as a release of all claims the selling shareholder may have against the corporation, or its directors, officers, or shareholders. The selling shareholder may still pursue any contractual claim he might have against the corporation—for example, a claim for breach of a long term employment contract—to the extent the claim is not dealt with in the court's order. Normally, however, the order should dispose of these contractual claims. The selling shareholder also retains the right to collect any unpaid balance due on the purchase price of his shares, including the right to realize on any collateral given as security for the unpaid balance. Quite frequently the shares being sold have been pledged as security; in these situations, if there is a default, the former shareholder has the choice of foreclosing on the note and again becoming a shareholder or suing to have the corporation dissolved under section 43 [35-9-504].

Under section 42(c) [35-9-503(3)] the court has power to modify its final order at any time upon the petition of any party. For example, should financial or legal constraints prevent the purchasers from fulfilling the terms of a mandated buy-out, the court might modify its order. See also the Official Comment to section 14 [35-9-205].

Finally, the buy-out and dissolution remedies provided by this section and section 43 [35-9-504] are cumulative of ordinary remedies available under section 41 [35-9-502]; for example, a court may award damages in addition to compelling a buy-out. See the Official Comment to section 40 [35-9-501].

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: This section is derived from section 42 of the ABA Model Statutory Close Corporation Supplement.

35-9-504. Extraordinary relief — dissolution.

Official Comments

See the Official Comments to sections 40-42 [35-9-501 through 35-9-503].

Compiler's Comments

2019 Amendment: Chapter 271 in (1)(a) near end substituted "35-14-1430" for "35-1-938"; and made minor changes in style. Amendment effective June 1, 2020.

1991 Amendment: At end of (1)(a) substituted "35-1-938" for "35-1-921". Amendment effective January 1, 1992.

Source: This section is derived from section 43 of the ABA Model Statutory Close Corporation Supplement.

CHAPTER 10
PARTNERSHIPS IN GENERAL

Chapter Compiler's Comments

Uniform State Law: This chapter constitutes the "Uniform Partnership Act" approved by the National Conference of Commissioners on Uniform State Laws in 1914. The Uniform Partnership Act has been adopted in 46 states and in the District of Columbia, Guam, and the Virgin Islands. Substantially similar provisions have been adopted in Alabama and Nebraska. Georgia, Louisiana, and Puerto Rico have not adopted the Uniform Act.

Chapter Case Notes

Partnerships — Capacity to Sue in Own Name: On certification from the Ninth Circuit Court of Appeals, the Montana Supreme Court held that a joint venture between two out-of-state corporations had the capacity to bring suit as a plaintiff against a corporation under Montana law. Relying on the Uniform Partnership Act and Montana statutes that allow a partnership to be sued in its own name and to sue in Small Claims Court, the Supreme Court found clear legislative intent to treat partnerships as distinct entities with the power to sue. Decker Coal Co. v. Commonwealth Edison Co., 220 M 251, 714 P2d 155, 43 St. Rep. 337 (1986).

Part 1
Preliminary Provisions

35-10-101. Short title.

Compiler's Comments

Source: This section is derived from sec. 1 of the Uniform Partnership Act.

35-10-102. Definitions.

Official Comment

The words "unless the contrary intention appears," found in many different sections, are omitted from this section because throughout this act the words defined in this section are not used in any other than the sense in which they are here defined.

Compiler's Comments

2011 Amendment: Chapter 26 in definition of statement near end after "renewal of registration" deleted "under 35-10-701". Amendment effective October 1, 2011.

1995 Amendment: Chapter 449 inserted definitions of limited liability partnership and partnership; in definition of statement, after "35-10-643", inserted "an application for registration of assumed business name or a renewal of registration under 35-10-701" and after "cancellation" inserted "or withdrawal"; and made minor changes in style.

1993 Amendment: Chapter 238 deleted definition of bankrupt that read: ""Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act"; deleted definition of conveyance that read: ""Conveyance" includes every assignment, lease, mortgage, or encumbrance"; deleted definition of court that read: ""Court" includes every court and judge having jurisdiction in the case"; deleted definition of real property that read: ""Real property" includes land and any interest or estate in land"; inserted definitions of debtor in bankruptcy, distribution, partnership agreement, partnership at will, property, state, statement, and transfer; and substituted definition of person for former definition that read: ""Person" includes individuals, partnerships, corporations, and other associations."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 2 of the Uniform Partnership Act.

Citation of Federal Act: The Federal Bankruptcy Act, cited in subsection (1), is compiled in the U.S. Code as Title 11, sec. 1, et seq.

Case Notes

Partnership Generally Governed by Partnership Agreement — Statutory Rules Applicable in Absence of Agreement to Contrary: A partnership is an association of two or more persons to carry on a business for profit as co-owners. An informal or oral agreement is usually sufficient to establish a partnership, and when a partnership agreement exists, the agreement will generally govern relations between partners. The statutory rules regarding partnerships are default rules that apply only in the absence of a partnership agreement to the contrary. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004).

35-10-103. Knowledge and notice.

Official Comment

The word "notice" in judicial opinions and in other legal writings is often used when "knowledge" as here defined is intended. This has led to a great deal of confusion, of which the extraordinary expression "constructive notice" is evidence. To avoid this confusion the word "notice" as here defined designates definite things only, which, if proved to have been done, enable the person doing them to assert that notice has been had and claim the benefit thereof, irrespective of whether the person charged has had knowledge or not. By adhering strictly to this conception throughout the act, the things which a person must do in order to be confident that he can claim the benefit of "notice" are made plain.

A definition of the word "knowledge" enables it to be indicated clearly when "knowledge" as distinguished from "notice" must be had.

The present law in regard to that which must be done by the person who desired to be in a position to claim the benefit of "notice" is in considerable confusion. Under our case law, as a rule, in ordinary transactions, except those which relate to commercial paper, no one has had "notice" until he has "knowledge"; though, of course, "notice" to an agent is notice to a principal. Whether the delivery of a letter containing a "statement of a fact" would or would not be sufficient if the addressee did not read the letter is doubtful. The court might as well hold that the addressee, by his neglect to read the statement, was estopped from denying that he had "notice." The change in the law, if it is a change, which the present section as now drawn effects, is, it is submitted, in the right direction. The section does not go to the extent of saying that the mere deposit of a "written statement of the fact" in the mail is enough to charge the addressee with "notice." The addressor by selecting the post-office, telegraph or other public service corporation, as the method by which the letter shall be transferred, makes them his agents, not the agents of the addressee. On the other hand the section does go to the extent of declaring that if such written statement is received at the residence or place of business of the addressee in the usual way, the addressor, having done all that was reasonably possible to do to give the addressee "knowledge," should have the benefit of his diligence.

The section as drawn, in dealing with the character of the "statement of fact," where the statement is not a verbal statement merely requires a "written statement." The omission of the word "printed" is after deliberation. To insert the word "printed" might raise a doubt as to the effect of the delivery of a newspaper containing a "statement of the fact." There ought to be no doubt that this is an insufficient statement. Unquestionably, such delivery is not a delivery of a "written statement of the fact;" but, on the other hand, if a printed or typewritten statement of the fact—as the dissolution of the partnership—is made on a separate card which is enclosed in an envelope and given to the addressee, there would appear to be no doubt that any court would hold that "a written statement of the fact" had been delivered to such person. The principle is clear. Nothing should be regarded as "a written statement of the fact" which is not so prepared as to cause the one to whom it is addressed, as a reasonably prudent man, to read it. An exact definition of the character of the statement which is to be made is practically impossible; neither do we believe it to be desirable. The words employed, "written statement of the fact," do not preclude the statement from being typewritten or printed but they do emphasize—that which it is necessary to emphasize—that the statement must be a separate statement of the fact made to the addressee, and not a general statement for all the world to read or not as fancy dictates.

The notes to [35-10-104], in regard to "estoppel" and "agency," will perhaps answer some questions which may arise in connection with the present section.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section clarifying the interpretation of "knowledge" and "notice" for former language that read: "(1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) states the fact to such person; or

(b) delivers through the mail or by other means of communication a written statement of the fact to such person or to a proper person at his place of business or residence."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 3 of the Uniform Partnership Act.

35-10-104. Uniformity of application and construction.

Official Comment

[Subsection] (1). This provision is customary in American Codes [Cal.C.C., section 4; 1 Ala. Code (1907), section 12; 1 Idaho Rev.Codes, section 4].

[Subsection] (2). This paragraph, applying to the whole act, obviates the necessity of constant repetition of the principle. Its necessity is illustrated in the provisions relating to "notice," [35-10-103(2)]. A "written statement" may be delivered in such a way as to induce the person to whom it is delivered to abstain from reading it. No one who has thus delivered a written statement should be permitted to claim the benefit of the notice. This result might be attained by inserting after the word "delivers," [35-10-103(2)(b)], the words "in good faith;" but these words would not provide for the case where the person who has delivered a written notice in good faith, changes his mind, and in bad faith reacquires the writing before it is read.

[Subsection] (3). This act is a partnership act and not an act relating to agency or any branch thereof. One of the causes of the present confused use of the word notice is due to the attempt to mix two distinct things: what is notice to a person of a fact, and how far notice to an agent is notice to a principal. The second question is wholly a question of the law of agency; the first has nothing to do with the law of agency. The first is dealt with in [35-10-103]; the second is not a question within the scope of a partnership act.

This [subsection] also avoids constant reference throughout the act to agents. For instance, in [35-10-301], there is provision that a partner cannot bind the partnership where the person dealing with him has knowledge that the partner with whom he deals has no authority to bind the partnership. The knowledge of an authorized agent of such person should, of course, be effectual. This [subsection] in regard to the law of agency avoids any possibility of a different construction, and renders unnecessary the insertion of the words "or authorized agent" after the word "person" in the section referred to and other similar sections.

[Subsection] (5). The wording is based on the American Codes. [Idaho Rev.Codes, section 4; Cal.C.C., section 4; Rev.Stat. of Colo. (1908), sections 467, 468; Gen.Stat. of Kans. (1905), 1633; 1 Burns Anno.Ind.Stat. (1908), sections 240, 241, 1356, 1359; Cobbey's Rev.Stat.Neb. 11, 363; 2 S. Dak.Comp.Laws (1908), 313, 316, 318.]

Compiler's Comments

1993 Amendment: Chapter 238 deleted (1) through (3) that read: "(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter"; after "law" inserted "with respect to the subject of this chapter"; deleted (5) that read: "(5) This chapter shall not be construed so as to impair the obligations of any contract existing on July 1, 1947, or to affect any action or proceedings begun or right accrued before July 1, 1947"; and made minor changes in style.

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 4 of the Uniform Partnership Act.

Case Notes

Operation and Effect: When defendant furnished working capital of firm, countersigned firm's checks, other members of firm said he was a partner, and defendant himself did not inform plaintiff otherwise, it was question for the jury whether the defendant should be treated as if he were a partner. Gustafson v. Taber, 125 M 225, 234 P2d 471 (1951).

35-10-105. Supplemental principles of law.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section stating supplemental principles of law for former language that read: "In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Not Uniform Act: This section was not derived from the Uniform Partnership Act.

Case Notes

Charging Partnership More Interest Than Amount Paid on Partnership Loan Considered Adverse to Partnership: A partner, acting unilaterally and with no business reason, paid off a partnership loan carrying a 9.25% interest rate and then sought to charge the partnership 10% and keep the profit. The District Court ordered that the partner be paid 9.25% on the loan, and the partner appealed. The Supreme Court held that ordering the partner to be paid 10% interest would be inequitable and unlawful and that the partner's action constituted dealing with the partnership as a party with an adverse interest in violation of the duty of good faith and fair dealing for a partner. The District Court was affirmed. McCormick v. Brevig, 2007 MT 195, 338 M 370, 169 P3d 352 (2007).

35-10-106. Effect of partnership agreement — nonwaivable provisions.

Case Notes

Partnership Governed by Partnership Agreement — Jurisdiction: The plaintiff appealed the judgment of the District Court that invalidated her efforts to force out her twin brother from the family's limited liability partnership created to steward the family ranch and property in eastern Montana. The brother counterclaimed on the issue of attorney fees, alleging that the District Court did not have authority to grant the award. Noting that under 35-10-106 the partnership agreement controlled the rights and duties of the partners, the Supreme Court reversed in part, concluding that the District Court erred by holding that the brother's interest was not subject to the buy-out provision of the partnership agreement and, therefore, judicial dissolution was not necessary. The Supreme Court held that, under Rule 6, M.R.Civ.P. (Title 25, ch. 20), the District Court did not have jurisdiction to award attorney fees because the award was made more than 60 days after the motion for fees was filed. Thus, the Supreme Court reversed the District Court's order awarding attorney fees and remanded for further proceedings. The court affirmed the remainder of the District Court's judgment. Ballou v. Walker, 2017 MT 197, 388 Mont. 283, 400 P.3d 234.

Partnership Agreement — Definition of "Practice of Medicine" — Application to Psychologists: Former partners of a medical clinic sued the clinic, claiming they were entitled to full partnership interest payments under a partnership agreement. The agreement provided for a reduction of partnership interest payments if a former partner continued to engage in the "practice of medicine" within 3 years of disassociation. The plaintiffs, who were psychologists still working in the community, claimed the phrase "practice of medicine" was a technical term that did not include psychologists. The District Court disagreed and concluded that under contract law, the ordinary and plain meaning of the phrase should be followed and that the ordinary meaning of the phrase included the practice of psychology. The plaintiffs appealed to the Supreme Court, which affirmed the District Court's grant of summary judgment in favor of the clinic. Krajacich v. Great Falls Clinic, LLP, 2012 MT 82, 364 Mont. 455, 276 P.3d 922.

Allocation of Referral Fee Among Law Partners — Summary Judgment Proper: Attorney Frampton received a large settlement fee in a personal injury case that was referred to him personally. Although he and one other partner did all the work on the case, Frampton gave each of the other partners a $25,000 bonus but kept his share of the settlement. One of the partners, Phelps, did no work on the case but was dissatisfied with the bonus and sued Frampton, asserting that his share should have been $120,000. Phelps asserted that Frampton breached the firm's written contract, violated partnership laws, breached an oral contract to share a substantial portion of the fee, breached the covenant of good faith and fair dealing, breached the fiduciary duty, and should have established a constructive trust because the fee was not Frampton's sole property and Frampton would be unjustly enriched by keeping the fee. The District Court granted summary judgment to Frampton on all the claims, and Phelps appealed. The Supreme Court examined each claim and affirmed. An unambiguous partnership agreement controlled the fee allocation. Although the District Court erred in finding that no covenant of good faith and fair dealing existed, Frampton did not breach the covenant because Phelps was not deprived of a benefit or justified expectation created by the partnership agreement. Phelps did not work on the case and was not entitled to a percentage of the fee under the agreement, and any expectation that Phelps had of receiving a share was unjustified. Additionally, the claim that Phelps had for breach of the written contract was directed at acts or omissions of the firm, and Phelps was barred from bringing claims against the firm by a signed release. Phelps v. Frampton, 2007 MT 263, 339 M 330, 170 P3d 474 (2007).

Partnership Generally Governed by Partnership Agreement — Statutory Rules Applicable in Absence of Agreement to Contrary: A partnership is an association of two or more persons to carry on a business for profit as co-owners. An informal or oral agreement is usually sufficient to establish a partnership, and when a partnership agreement exists, the agreement will generally govern relations between partners. The statutory rules regarding partnerships are default rules that apply only in the absence of a partnership agreement to the contrary. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004).

Allocation of Losses in Other Than Equal Proportion Than Division of Profits: One of two equal partners claimed all of the partnership's losses on his personal taxes for the purpose of receiving a tax benefit. When the time came for final settlement, it was contended that half the losses suffered by the partnership should be assigned to the estate and that because the losses for which the estate was allegedly responsible were greater than the assets to which the estate was entitled, nothing was owed to the estate from the partnership. The District Court held that because one partner benefited from the partnership losses, he must also bear the burden of the action and was effectively precluded from trying to assign a share of the losses to the estate. Citing section 704(b) of the Internal Revenue Code, the Supreme Court agreed, holding that when partners exercise their right to allot partnership losses in some fashion other than in equal proportion to their division of profits, that allotment controls for purposes of determining losses during settlement. The District Court did not err in refusing to allocate partnership losses to the estate, which would have diminished the value of the estate's interest in the partnership. In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767, 55 St. Rep. 1251 (1998). See also Ballou v. Walker, 2017 MT 197, 388 Mont. 283, 400 P.3d 234.

Partners' Failure to Comply With Agreement Terms Resulting in No Explicit Partnership Value — Fair Market Value Properly Ascribed: A 1968 agreement established the value of a partnership at $47,790.30 and required the partners to arrive annually at a new and updated value that would serve for the following year as the value of the partnership. However, the partners never reestablished any different value during the duration of the partnership. After one partner died in 1995, the District Court properly concluded that fair market value at the time of death should apply because the partners failed to comply with the terms of the agreement and thus were left without an explicitly agreed-upon value. In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767, 55 St. Rep. 1251 (1998), following Chapman v. Dunnegan, 665 SW 2d 643 (Mo. Ct. App. 1984).

35-10-111. Execution, filing, and recording of statements.

Administrative Rules

ARM 44.5.116 Limited liability partnership fees.

35-10-112. Facsimile filing — requirements — liability.

Compiler's Comments

1997 Amendment: Chapter 290 at end of first sentence in (1) deleted "provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy"; deleted (2) through (4) that read: "A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void"; and made minor changes in style. Amendment effective April 18, 1997.

35-10-113. Filing with secretary of state.

Compiler's Comments

2005 Amendment: Chapter 71 in (1) at beginning of first sentence substituted "A signed statement" for "The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of any statement" and near middle of second sentence substituted "the statement conforms" for "the documents conform"; in (1)(a) near middle substituted "statement" for "original and duplicate copy"; in (1)(b) substituted "statement" for "original"; in (1)(c) at beginning substituted "send a certification letter" for "return the duplicate copy"; and made minor changes in style. Amendment effective October 1, 2005.

35-10-116. Law governing internal affairs.

Compiler's Comments

1995 Amendment: Chapter 449 at beginning inserted exception clause.

Part 2
Nature of Partnership

35-10-201. Partnership as entity.

Official Comment

[Subsection] (1). Explanation of the Reason for the Words Employed in the Definition. The first inquiry is, Why say a partnership is "an association of two or more persons"? In view of the fact that the word "association" itself implies the acting together of two or more persons, why not merely say that a partnership is an association to carry on business in which the members are co-owners of the business? The word person includes, as stated in [35-10-102], "individuals, partnerships, corporations, and other associations." The definition as worded thus asserts, what would be doubtful if the words "of two or more persons" were omitted, namely, that any one of these associations may become members of a partnership. It is true that if two or more corporations attempt to form a partnership the contract may be ultra vires as to both (Boyd v. American Carbon Black Co., (1897) 37 Atl. 937, 182 Pa.St. 206); but the capacity of corporations to contract is a question of corporation law. Under the present law it appears that a partnership can, as such, be a member of another partnership, if that was the intent of the parties. [Raymond v. Putman, (1862) 44 N.H. 160; Cheap v. Cramond, (1821), 4 Barn. & Ald. 663, 6 E.C.L. 645; In re Hamilton, (1880) 1 Fed. 800; Riddle v. Whitehill, (1890) 10 S.Ct. 924, 135 U.S. 621, 34 U.S. (L.Ed.) 282.]

The words "to carry on as co-owners a business" remove any doubt in the following case: A and B sign partnership articles and make their agreed contributions to the common fund. A refuses to carry on business as agreed. Is there a partnership to be wound up in accordance with the provisions of Part [6] "Dissolution and Winding-up"? The words quoted require an affirmative answer to this question. If the words "carrying on business" had been used, in the case given, no partnership would exist, and Part [6] would not apply.

The definition asserts that the associates are "co-owners" of the business. This distinguishes a partnership from an agency—an association of principal and agent. A business is a series of acts directed toward an end. Ownership involves the power of ultimate control. To state that partners are co-owners of a business is to state that they each have the power of ultimate control.

Lastly, the definition asserts that the business is for profit. Partnership is a branch of our commercial law; it has developed in connection with a particular business association, and it is, therefore, essential that the operation of the act should be confined to associations organized for profit.

In view of the many definitions of a partnership which have been proposed, it is desirable to note the reasons for the omission of certain ideas expressed in some of the definitions cited by Lindley in his work on Partnership, pp. 11, 12.

It is not indicated that the association must be a voluntary one. In the domain of private law the term association necessarily involves the idea that the association is voluntary.

To say that the association must be created by contract, is not only unnecessary, but in view of the varied use of the word "contract" in our law, if the word is used an explanation would have to be made as to whether the contract could be implied, and if so, whether it could be implied in law or only implied as a fact. By merely saying that it is an association these difficulties are avoided.

Again, it is not said that the business must be lawful business. The effect of the unlawfulness of the business is dealt with under Part [6] "Dissolution and Winding-up." Section [35-10-603(3), now repealed], provides that dissolution is produced "[b]y any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership." If the business is wholly unlawful, then the partnership is dissolved the moment it is created. The omission of the word "lawful" in the definition does not prevent this result. Very often, however, a business may be in part lawful and in part unlawful. Hotelkeepers may run a "dive." Placing the word "lawful" before the word business in the definition would tend to throw a doubt on the propriety of the orderly winding up of such a business as a partnership.

[Subsection] (2). The reason for not following the English act and attempting to enumerate the associations which are excluded because formed under special statutes, is because such an enumeration is unnecessary, and because the [subsection] would have to be differently worded for each state. The [subsection] as drawn makes any association formed under a statute a partnership if it would have been a partnership in the state if the act had not been adopted. If the association would not have been a partnership had the act not been adopted, the adoption of the act does not make it a partnership. In short, the adoption of the act does not change the legal status in the state of any association formed under a statute.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section defining a partnership as an entity for former language that read: "(1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state or any statute adopted by authority other than the authority of this state is not a partnership under this chapter unless such association would have been a partnership in this state prior to the adoption of this chapter. But this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 6 of the Uniform Partnership Act.

Case Notes

Partnership Generally Governed by Partnership Agreement — Statutory Rules Applicable in Absence of Agreement to Contrary: A partnership is an association of two or more persons to carry on a business for profit as co-owners. An informal or oral agreement is usually sufficient to establish a partnership, and when a partnership agreement exists, the agreement will generally govern relations between partners. The statutory rules regarding partnerships are default rules that apply only in the absence of a partnership agreement to the contrary. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004).

35-10-202. Creation of partnership.

Compiler's Comments

1993 Amendment: Chapter 238 substituted (1) through (3) regarding creation of a partnership for introductory clause and former (1) that read: "In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by 35-10-308 persons who are not partners as to each other are not partners as to third persons"; in (3)(c), before "a partner", substituted "presumed to be" for "prima facie evidence that such person is"; substituted (3)(c)(i) through (3)(c)(vi) enumerating types of payments for former (4) that read: "(4) The receipt by a person of a share of the profits of a business is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) as a debt by installments or otherwise;

(b) as wages of an employee or rent to a landlord;

(c) as an annuity to a surviving spouse or representative of a deceased partner;

(d) as interest on a loan, though the amount of payment varies with the profits of the business;

(e) as the consideration for the sale of a goodwill of a business or other property by installments or otherwise"; inserted (4) regarding persons who are not partners as to each other; inserted (5) clarifying that a partnership is considered a general partnership; and made minor changes in style.

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 7 of the Uniform Partnership Act.

Case Notes

DECISIONS AFTER 1993 REVISION

No Liability for Unpaid Wage Claim by Former Business Partner: Donald and Gail Peterson owned and operated a bar and casino. When Gail discovered an intimate relationship between Donald and plaintiff who was an employee, she demanded that they leave the establishment, and Gail then operated the business alone. The Petersons agreed to divorce, and as part of the settlement, Donald was allowed to operate the jointly owned business, receive all the profits, and assume all liabilities generated by the operation of the business, and Gail ceased any involvement with the day-to-day operations. Donald and plaintiff continued to operate the business as a couple, but Donald paid plaintiff no wages for 18 months. Gail eventually purchased the business assets and assumed the business debts and liabilities, at which point plaintiff brought a claim against Gail for the unpaid wages. An administrative judge held that the Petersons were jointly and severally liable as partners. The District Court upheld the decision, and Gail appealed. The Supreme Court noted that all four criteria in MacArthur Co. v. Stein, 282 M 85, 934 P2d 214 (1997), must be established to prove the existence of a partnership. Here, three of the four criteria did not exist after Gail relinquished control of the business to Donald. Because Gail was not a partner during the time that the wage claim arose, she bore no responsibility for wages owing during the period in question. In re Wage Claim of Harker v. Peterson, 2003 MT 175, 316 M 393, 72 P3d 949 (2003). See also In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767 (1998).

Whether Partnership Exists — Mixed Question of Fact and Law: The question of whether a partnership exists constitutes a mixed question of fact and law. Courts must decide as a matter of law what constitutes a partnership, but the determination of whether the evidence in a given case supports the existence of a partnership is a question of fact. When the facts are undisputed or susceptible of only one inference, the question of whether a partnership exists between particular persons is one of law for the court. In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767, 55 St. Rep. 1251 (1998). See also Simons v. N. Pac. Ry. Co., 94 M 355, 22 P2d 609 (1933), Pruitt v. Fetty, 134 SE 2d 713 (W. Va. 1964), and Blocker Exploration Co. v. Frontier Exploration, Inc., 740 P2d 983 (Colo. 1987).

DECISIONS PRIOR TO 1993 REVISION

Joint Purchase of Real Estate — Finding of Partnership: The joint purchase of undeveloped real estate as tenants in common with equal contributions and with intent to resell the property for a profit, the subsequent consent to exchange the property for a commercial building, and the right to share in profits from the sale of the building are evidence that the parties were engaged together in business for profit. Barrett v. Larsen, 256 M 330, 846 P2d 1012, 50 St. Rep. 96 (1993).

Elements of Joint Venture: To qualify as a joint venture, four elements must be met: (1) an express or implied agreement or contract creating the joint venture; (2) a common purpose among the parties; (3) community of interest; and (4) an equal right to control of the venture. Weingart v. C&W Taylor Partnership, 248 M 76, 809 P2d 576, 48 St. Rep. 332 (1991).

Failure to Establish Partnership: Elements necessary to establish a partnership are outlined in Bender v. Bender, 144 M 470, 397 P2d 957 (1965). Partnership was not established where a party failed to provide sufficient evidence of: (1) commencement of partnership; (2) intent to form a partnership; (3) agreement to share profits and losses; and (4) the party's right to control partnership assets. Smith v. Estate of Smith, 230 M 140, 749 P2d 512, 45 St. Rep. 93 (1988), followed in Antonick v. Jones, 236 M 279, 769 P2d 1240, 46 St. Rep. 359 (1989), and in Wiberg v. 17 Bar, Inc., 241 M 490, 788 P2d 292, 47 St. Rep. 429 (1990), with Wiberg distinguished in Barrett v. Larsen, 256 M 330, 846 P2d 1012, 50 St. Rep. 96 (1993). See also Mont. Bank of Red Lodge v. Lightfield, 237 M 41, 771 P2d 571, 46 St. Rep. 605 (1989), Weingart v. C&W Taylor Partnership, 248 M 76, 809 P2d 576, 48 St. Rep. 332 (1991), Tondu v. Akerley, 259 M 194, 855 P2d 116, 50 St. Rep. 754 (1993), MacArthur Co. v. Stein, 282 M 85, 934 P2d 214, 54 St. Rep. 254 (1997), and In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767, 55 St. Rep. 1251 (1998).

Insubstantial Evidence of Partnership: There was conflicting evidence of an intention to form a partnership among three brothers—Jim, Fred, and Ross. There was: (1) no evidence of a contribution by Ross of anything promoting the partnership enterprise; (2) no joint proprietary interest in or right of mutual control over the business or its assets; and (3) a finding that, with regard to taxes, Ross received a share of net profits and losses of the business as payment of wages as an employee. The lower court properly held that Ross was a business employee rather than a partner. Pulliam v. Pulliam, 226 M 94, 733 P2d 1299, 44 St. Rep. 483 (1987).

Finding of Partnership — Splitting of Profits, Advertising, and Merging of Resources and Talents — Lack of Intent Not Controlling: Father and son shared equipment as needed, stored seed potatoes together in son's warehouse, advertised under the name of "Wilbur Kimm and Son", and split profits in a joint account. Son's insurer sued father's insurer for contribution for claims paid that were filed by buyers against son for crop damages caused by seeds treated by son. District Court found no partnership existed, primarily based on father's and son's testimony that they did not intend for a partnership to exist. The Supreme Court reversed and ordered judgment granting plaintiff insurer's motion for summary judgment. The Supreme Court held that splitting of profits, coupled with advertising under a joint name and the merging of resources and talents for the growing of the potatoes, preponderated against the District Court's finding of no partnership. Truck Ins. Exch. v. Indus. Indem. Co., 212 M 297, 688 P2d 1243, 41 St. Rep. 1835 (1984), followed in MacArthur Co. v. Stein, 282 M 85, 934 P2d 214, 54 St. Rep. 254 (1997).

Finding of Partnership — Authority of Partner: The Ellingson Agency and The Four Seasons Motor Inn held a lot as tenants in common. They made equal contributions to the purchase price and received equal distributions of the proceeds. They had made similar purchases for resale in the past. The Ellingson Agency collected the rent on the property and kept records of the amounts collected. The rent proceeds were used to pay property taxes and maintain a house on the property. These facts were sufficient to find that the corporations were acting as a partnership. Ellingson, as a partner, had the authority to enter into an agreement to convey the property. The buyer was able to compel specific performance of the buy-sell agreement. Walsh v. Ellingson Agency, 188 M 367, 613 P2d 1381 (1980), overruling Ivins v. Hardy, 120 M 35, 179 P2d 745 (1947), with Walsh followed in Barrett v. Larsen, 256 M 330, 846 P2d 1012, 50 St. Rep. 96 (1993).

35-10-203. Partnership property.

Official Comment

[Subsections] (3), (4), in connection with [35-10-302], do away with existing confusions where there has been a conveyance to a partnership in the partnership name, or a conveyance by a partner in the partnership name. At present such conveyance may convey an equitable, but does not convey a legal title. To this extent [subsection] (3) of this section and [35-10-302(1)] change existing law.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partnership property for former language that read: "(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 8 of the Uniform Partnership Act.

Case Notes

DECISIONS AFTER 1993 REVISION

Trial Court Selection of One Appraisal of Partnership Property Over Another Not Erroneous: Pursuant to a court order, partnership property was to be sold and the proceeds divided between two partners. Each partner desired to keep certain property, so in 2001 they agreed to have all the property appraised and have each partner purchase the desired equipment from the other. Partner Otto was dissatisfied with the appraisal and hired another appraiser to value the property. Despite having sought and received the second appraisal, Otto did not pay partner William for the property. About 2 years later, Otto hired a third appraiser, who completed an appraisal in 2006. In its post-2006 trial order, the District Court ordered Otto to pay William the value established in the second appraisal. Otto contended on appeal that the court erred in choosing the second appraisal over the third. The Supreme Court affirmed. The District Court's selection was a factual as opposed to a legal decision, and because there was substantial credible evidence to support the factual decision, the Supreme Court declined to disturb it. Baltrusch v. Baltrusch, 2008 MT 245, 344 M 489, 190 P3d 1034 (2008).

Property Acquired by Partner, but Not in Capacity as Partner, Considered Separate Property: Defendant's wife purchased 10 cows to live on the partnership ranch. The following year, she transferred the brand and ownership of the cattle to her husband, a partner in the ranch, and his sons. The cattle were thereafter listed and treated as partnership property for tax purposes, and proceeds from sale of the cattle were placed in a partnership account. When the partnership was winding up, the District Court concluded that the cattle were a partnership asset. Defendant contested the finding, arguing that the mere inclusion of the cattle in partnership tax returns was legally insufficient to transfer title of the cattle to the partnership. The Supreme Court agreed. Under subsection (5) of this section, property that is acquired in the name of a partner without an indication that the property is being transferred to that person in the capacity of a partner of the partnership is presumed to be separate property, even if the property is used for partnership purposes. Thus, the cattle were improperly characterized as partnership property, and the District Court was reversed. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004). See also In re Marriage of Schultz, 199 M 332, 649 P2d 1268 (1982).

Separate Business Started by Partner Not Considered Partnership Asset: When one partner, Otto, refused to sign any more indemnity agreements, the other partner, William, started a separate business to allow further entry into additional bonding contracts. When the partnership dissolved, Otto contended that the assets of the separate business should be considered jointly owned and be equally divided. The District Court held that William's business was not a partnership asset, and the Supreme Court agreed because: (1) William's business was not purchased with partnership assets; (2) Otto had no part in operating William's business; (3) William's business paid rent to the partnership for equipment; (4) income from some of William's construction projects was donated to the partnership; and (5) William's business did not profit at the expense of or compete with the partnership. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

Vehicles Listed as Partnership Assets Considered Property Subject to Equal Division Upon Dissolution of Partnership: Two partners agreed that the proceeds from the sale of all partnership assets would be divided equally between them upon dissolution. The District Court included two vehicles that were titled personally to one of the partners and his wife. The other partner contended that the personal use of the vehicles constituted conversion and that he was entitled to damages and interest under 27-1-320. The Supreme Court disagreed. Under this section, partnership property includes property purchased with partnership assets even if not purchased in the name of the partnership. Further, whether property is partnership property depends on the intent of the partners, as indicated by agreement or conduct. In this case, the vehicles were used for partnership business and listed as partnership assets and therefore considered partnership property, so proceeds from the vehicles' sale were properly divided between the partners. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

Judgment Not Creating Lien Prior to Execution on Personal Property: In settling the assets of a partnership, the District Court stated that its judgment constituted a lien against all personal property of the partnership. The remaining partner contended that based on 25-9-301, the court lacked authority to create a lien against personal property and that a judgment cannot become a lien against personal property until there has been an execution to enforce the judgment. Reversing, the Supreme Court agreed that there is no authority for a District Court to summarily convert a judgment to a lien against personal property, noting that a lien does not arise prior to execution on personal property. In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767, 55 St. Rep. 1251 (1998).

Real Property Properly Not Considered Partnership Asset: The District Court refused to consider certain real property as a partnership asset, concluding that it was never intended by the partners that the property should become an asset subject to distribution or taken into account upon dissolution of the partnership or death of a partner. The Supreme Court noted that the question of whether property belongs to a partnership depends primarily on the intent of the partners, and that intent may be inferred from a variety of sources, such as an agreement between the partners or by their conduct, although no single factor is determinative. The presumption that property is partnership property if it is acquired with partnership assets is rebuttable. In the present case, one partner contributed land for partnership use, but reserved title and the right to sell the land. The partners' intent clearly indicated that the property was not intended to become a partnership asset, and the District Court did not err when it refused to award the estate a share of the value of the land. In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767, 55 St. Rep. 1251 (1998).

DECISIONS PRIOR TO 1993 REVISION

Master's Report Conclusive Unless Clearly Erroneous: The plaintiff, in a partnership dissolution action, argued that the lower court had erred in finding that a tavern he had given his ex-wife during his divorce was partnership property and that the court erred in placing a $50,000 value on the property. The Supreme Court held that there was sufficient evidence to find that the tavern had been originally purchased with partnership funds and therefore remained a partnership asset. The court also ruled that the valuation placed on the property was that arrived at by a court-appointed master and that unless clearly erroneous, the valuation was binding on the lower court. Mehl v. Mehl, 241 M 310, 786 P2d 1173, 47 St. Rep. 292 (1990).

Death of Partner — Disposition of Property Held Jointly by Partners: Robert and William, brothers, opened a joint checking account in 1947, paid all ranch expenses through the account, put all ranch income in the account, and equally split net profits. All cattle were branded with either of two brands, each of which was registered in the name of "William Palmer or Robert Palmer". The brothers were also joint tenants in a commodity brokerage account. The Supreme Court held that the cattle and both accounts were partnership property not held in joint tenancy and remained so upon Robert's death. Thus, they did not pass to William as the surviving joint tenant; rather, they remained in the partnership for the purpose of winding up the partnership and paying its liabilities, after which William must account to Robert's survivor, his widow, for Robert's share of the partnership. By its very nature, partnership property must be treated differently than property of individuals, including property held by individuals as joint tenants but who are not in partnership. This rule applies regardless of the formal legal manner in which the property is held. This is a rule of equity developed over hundreds of years and codified in the Uniform Partnership Act. In re Estate of Palmer, 218 M 285, 708 P2d 242, 42 St. Rep. 1585 (1985), followed in Fiedler v. Fiedler, 266 M 133, 879 P2d 675, 51 St. Rep. 691 (1994).

Acquisition of Real Property by Partnership: A partnership can acquire real estate by having the partners take title as cotenants. Robertson v. Robertson, 180 M 226, 590 P2d 113 (1978).

Ownership of Real Property: As against purchasers and lien creditors dealing with the owners of land on the faith of a recorded title and without notice that ownership is different from what appears on record, parol evidence is inadmissible to show that land conveyed to the grantees as individuals was held by them as partnership property. Robertson v. Robertson, 180 M 226, 590 P2d 113 (1978).

Part 3

Relation of Partner and Partnership to Other Persons

Part Case Notes

Individual Liability of Partners — General Rule: The Supreme Court cited the Wisconsin case of Phillip Lithographing Co. v. Babich, 135 NW 2d 343 (1965), in determining whether certain partners were individually liable on a contract. The general rule is that partners who continue to hold themselves out as such after the formation of a corporation cannot escape responsibility for contracts entered into after the change in business status without adequate notice that the partnership has been dissolved. This is especially true when the corporation operates under the same name and circumstances as the partnership. Springer v. Opsahl, 229 M 10, 744 P2d 884, 44 St. Rep. 1738 (1987).

Suit Against Partnership by Partner's Spouse: The spouse of one general partner may sue the partnership in tort for her individual property loss. Norick v. Dove Constr., 204 M 57, 662 P2d 1318, 40 St. Rep. 660 (1983).

35-10-301. Partner as agent of partnership.

Official Comment

The words "including the execution in the partnership name of any instrument" [in subsection (1)] avoid any possible doubt as to whether a partner has the authority, in the ordinary course of business, to enter into formal contracts for his partnership, or to convey partnership property when the conveyance is the result of a sale in the ordinary course of partnership business.

Compiler's Comments

1993 Amendment: Chapter 238 at beginning inserted introductory clause; in (1) and (2) substituted "ordinary course of the partnership business or business of the kind carried on by the partnership" for "the usual way"; deleted (3) and (4) that read: "(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

(b) dispose of the goodwill of the business;

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership;

(d) confess a judgment;

(e) submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction"; and made minor changes in style.

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 9 of the Uniform Partnership Act.

Case Notes

DECISIONS AFTER 1993 REVISION

Termination of Land Leases Within Regular Course of Business — No Breach of Fiduciary Duty: A partnership held land leases for over 30 years until the partner who managed the leases realized that the leases were no longer economically advantageous to the partnership, at which point he offered the leases to his sons, who formed a separate corporation to manage the leases. The other partner contended that transferring the leases without his permission was a breach of fiduciary duty. The District Court held that there was a legitimate reason for the partnership to terminate the leases, that the decision was made in the regular course of business, and that no breach of duty occurred. The Supreme Court agreed. The partner who managed the leases did not act out of his authority as a partner or bind the other partner to something undesirable. The transfer did not harm the partnership, nor was the transfer out of the ordinary; therefore, no liability attached to the lease transfer. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

DECISIONS PRIOR TO 1993 REVISION

Property Not Assignable Without Consent of All Partners: Two partners, without the knowledge or consent of the third partner who had instigated an action to dissolve the partnership, executed a trust indenture assigning marina property owned by the partnership as collateral for the loan. The Supreme Court held that the marina was partnership property and that the two partners had no authority to bind the partnership or encumber their individual one-third interests in the partnership property without the consent of all partners. The savings and loan had no interest in the property. Schrammeck v. Fed. Sav. & Loan Ins. Corp. 258 M 391, 853 P2d 702, 50 St. Rep. 580 (1993).

Partnership by Estoppel — Corporate Shareholders: The shareholders of a corporation can be liable as partners to a person dealing with the corporation if through some action or inaction of the corporation the person reasonably believes he is dealing with a partnership and relies upon that belief in dealing with the corporation. In this case there were various partnerships and a corporation, all with similar names and consisting of the same people, and although some evidence tended to show that operations of the corporation were apparently partnership operations, the existence of a partnership by estoppel is a factual issue, and in this case summary judgment finding such a partnership was improperly granted because factual issues remained. Gamble Robinson Co. v. Carousel Properties, 212 M 305, 688 P2d 283, 41 St. Rep. 1757 (1984).

Realtor Buying Property — Not Usual Way of Doing Business: As part of a real estate transaction in which the buyers needed to sell a piece of property in order to purchase other property, the realtor acting on behalf of the buyers executed a memorandum stating that if the property was not sold by a set time, she would purchase the property at a stated price. The memorandum was not signed by the realtor's alleged partner. On appeal, he contended he could not be bound by the memorandum under the Statute of Frauds. The Supreme Court held that the realtor could not bind her ostensible partner since there was no written authority of agency and because the purchase of real estate was not the realtor's usual way of doing business. The alleged partner could not be bound to the contract evidenced by the memo absent his authorization thereunto in writing. McNabb v. Norine, 204 M 330, 664 P2d 927, 40 St. Rep. 878 (1983).

Finding of Partnership — Authority of Partner: The Ellingson Agency and The Four Seasons Motor Inn held a lot as tenants in common. They made equal contributions to the purchase price and received equal distributions of the proceeds. They had made similar purchases for resale in the past. The Ellingson Agency collected the rent on the property and kept records of the amounts collected. The rent proceeds were used to pay property taxes and maintain a house on the property. These facts were sufficient to find that the corporations were acting as a partnership. Ellingson, as a partner, had the authority to enter into an agreement to convey the property. The buyer was able to compel specific performance of the buy-sell agreement. Walsh v. Ellingson Agency, 188 M 367, 613 P2d 1381 (1980), overruling Ivins v. Hardy, 120 M 35, 179 P2d 745 (1947).

Business of Partnership: The sale of all the property of a partnership is not the "carrying on in the usual way the business of the partnership" within meaning of this section. Ditzel v. Kent, 131 M 129, 308 P2d 628 (1957).

Sale of Partnership Property: When real estate broker dealing with members of a partnership knew that certain partner did not have authority to bind the other partners, he could not bring action for breach of contract for payment of commission when the only signer to contract was that partner. Ditzel v. Kent, 131 M 129, 308 P2d 628 (1957).

35-10-302. Transfer of partnership property.

Official Comment

The adoption of this section does away with the existing uncertainty surrounding the subject of the conveyance of real property belonging to a partnership.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding transfer of partnership property for former language that read: "(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name, but the partnership may recover such property unless the partner's act binds the partnership under the provisions of 35-10-301(1) or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(3) Where title to real property is in the name of one or more but not all the partners and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of 35-10-301(1), unless the purchaser or his assignee is a holder for value without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name or in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 10 of the Uniform Partnership Act.

Case Notes

Termination of Land Leases Within Regular Course of Business — No Breach of Fiduciary Duty: A partnership held land leases for over 30 years until the partner who managed the leases realized that the leases were no longer economically advantageous to the partnership, at which point he offered the leases to his sons, who formed a separate corporation to manage the leases. The other partner contended that transferring the leases without his permission was a breach of fiduciary duty. The District Court held that there was a legitimate reason for the partnership to terminate the leases, that the decision was made in the regular course of business, and that no breach of duty occurred. The Supreme Court agreed. The partner who managed the leases did not act out of his authority as a partner or bind the other partner to something undesirable. The transfer did not harm the partnership, nor was the transfer out of the ordinary; therefore, no liability attached to the lease transfer. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

Knowledge of Lack of Authority to Bind Partnership: Subsection (4) (see 1993 amendment) had no application when real estate broker who was attempting to enforce commission contract signed by only one partner knew that the one partner did not have authority to bind partnership. Ditzel v. Kent, 131 M 129, 308 P2d 628 (1957).

35-10-305. Partnership liable for partner's actionable conduct.

Compiler's Comments

1993 Amendment: Chapter 238 inserted (2) regarding partnership liability for misapplied money or property; and made minor changes in style.

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 13 of the Uniform Partnership Act.

Case Notes

DECISIONS PRIOR TO 1993 REVISION

Dismissal of Partner Sued in Individual Capacity: It was not error for the trial court to dismiss a partner sued in his individual capacity when there was no evidence he was personally involved with any alleged wrongful acts. The dismissal did not affect his liability as a partner. Niles v. Big Sky Eyewear, 236 M 455, 771 P2d 114, 46 St. Rep. 504 (1989).

Negligence Not in Ordinary Course of Farming Partnership: Plaintiff sued father and son, both as individuals and as members of farming partnership, for injuries he received while a passenger in plane piloted by son. Plaintiff failed to establish that son's alleged negligence took place in the ordinary course of the farming partnership. Therefore, the trial court properly granted father's motion for summary judgment in claim against him. Waller v. Engelke, 227 M 470, 741 P2d 385, 44 St. Rep. 1241 (1987).

35-10-307. Partner's liability.

Official Comment

The actual condition of the American statute law affecting the nature of partnership liability is as follows:

In the following states by specific declaration of statutes all partnership liability is made both joint and several: [Miss.Code (1906), par. 2683; Mo.Anno.Stat. (1906), pars. 889, 892; 2 Ala.Code, par. 2506; N.Mex.Comp.L. (1897), pars. 2894, 2895, 2942, 2943; Md.Gen. Law (1904), p. 1357; W.Va.Code (1906), pars. 1996, 3467, 3787; D.C.Code (1889), par. 1205; Iowa (1897), pars. 3465, 3468; Gen.Stat.Kansas (1900), par. 1641; Minn.Rev.Laws (1905), pars. 4282, 4283; N.C.Rev.

Laws (1905), par. 413; Ark.Statutes, Kirby (1904), pars. 4420, 4422]. In some of these states the liability is merely "deemed to be joint and several for the purpose of suit." In some of the states referred to the statutes are general; that is, they include all joint liability; while in others, there is the general statement followed by specific enumeration of partnership liability. But in all the states referred to the statutes, taken as a whole, effect, not only partnership liability, but also all joint liability.

In Illinois the court refused to interpret a general statute making all liability joint and several so as to include partnership liability. [Fleming v. Ross, (1907) 225 Ill. 149, 80 N.E. 92, 8 Ann.Cas. 314]; also the courts of Colorado [Erskine v. Russell, (1908) 43 Colo. 449, 453, 96 Pac. 249]. In New York, though the statute apparently made partners liable jointly and severally (3 Cons.L., p. 2522, par. 6), the court refused so to interpret the act [Seligman v. Friedlander, (1910) 138 App. Div. 784, 123 N.Y.S. 583].

In Texas, Oklahoma, Montana, Pennsylvania, New York, Colorado, Illinois, North Dakota, South Dakota, Ohio, Massachusetts, New Jersey, Georgia, Vermont, Virginia, Rhode Island, Kentucky, Michigan, Maine, Connecticut, Idaho and Indiana, partnership liability is joint. In many of these states, however, the results of joint liability as known to the common law have been modified by statute and decision. The extent of the modification varies. In some each partner must be sued severally or all jointly, an election being required. In some the partnership may be sued in the partnership name, and thereafter the partners separately until satisfaction is had. In all the estate of the deceased partner is subject to liability, but in some only after action first had against the survivors; in others proof of no partnership property must first be made; in others proceedings may be first had against the estate.

The purpose of the statutes in those states which have made the liability joint and several was to effect certain procedural results, rather than to affect the substantive law. Where, therefore, a state has already declared the liability to be joint and several, then the principle of uniformity would not be affected by that state so altering this paragraph as to make the liability joint and several, as this change would affect only the procedural law and this act is one to make uniform the substantive law of partnership.

Compiler's Comments

1995 Amendment: Chapter 449 in (1), at beginning, inserted exception clause; inserted (2) concerning items limited liability partnership is not liable for; inserted (3) concerning liability for partner's own negligence; inserted (4) concerning partner acting as guarantor or surety; inserted (5) concerning liability for partnership debts; and inserted (6) concerning partner as party to proceeding.

1993 Amendment: Chapter 238 substituted present section regarding partner's liability for former language that read: "All partners are liable:

(1) jointly and severally for everything chargeable to the partnership under 35-10-305 and 35-10-306;

(2) jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 15 of the Uniform Partnership Act.

Case Notes

DECISIONS AFTER 1993 REVISION

No Breach of Partnership Duty of Loyalty and Care When Partnership Property Accounted For: One partner transferred a partnership-owned tractor to a corporation owned by his sons, allowed the sons limited use of other partnership property without charging rent, and used personal credit cards for items for which the partnership paid. The other partner contended that this constituted conversion of partnership property and a breach of the duty of loyalty and duty of care to the partnership. The District Court found no conversion or breach of duty, and the Supreme Court affirmed. Under 35-10-405, a partner has a duty to account for partnership property or benefits received from the use or appropriation of the property, and here a proper accounting was made. The tractor was paid for, the use of other partnership property was minimal, and personal credit card expenses were accounted for separately from partnership charges. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

DECISIONS PRIOR TO 1993 REVISION

Liability of Innocent Partner for Restitution of Insurance Proceeds Paid Guilty Partner: Partners in a bar and motel business that was destroyed by fire threatened a bad faith claim against their insurer when 6 months had passed and no payments for the losses had been made. After payment was made, the insurer sought restitution from both partners after discovering that the fire was arson caused by one of the partners, even though one of the partners was not involved in the criminal activity. The Supreme Court found restitution to be proper from both partners because the insurance proceeds had been obtained through filing of a fraudulent claim, which voided the policy. A change in circumstances could not be argued by the innocent partner under the insurance exception set out in Comment b of Restatement of Restitution, sec. 142. Under this section, both partners were liable jointly for all debts and obligations of the partnership. (See 1993 and 1995 amendments.) Tyler v. Fireman's Fund Ins. Co., 255 M 174, 841 P2d 538, 49 St. Rep. 958 (1992).

Dismissal of Partner Sued in Individual Capacity: It was not error for the trial court to dismiss a partner sued in his individual capacity when there was no evidence he was personally involved with any alleged wrongful acts. The dismissal did not affect his liability as a partner. Niles v. Big Sky Eyewear, 236 M 455, 771 P2d 114, 46 St. Rep. 504 (1989).

Joint Venture: Since joint ventures and partnerships are similar, employee of joint venture covered under Workmen's Compensation Act (now Workers' Compensation Act) was employee of individual members of joint venture and consequently could not maintain an action to recover damages from individual member of joint venture for negligence. Hamman v. U.S., 267 F. Supp. 420 (D.C. Mont. 1967).

35-10-308. Purported partner.

Official Comment

This section clears several doubts and confusions of our existing case law. It has been held that a person is liable if he has been held out as a partner and knows that he is being held out, unless he prevents such holding out, even if to do so he has to take legal action. (Fletcher v. Pullen, (1889) 16 Atl. 887, 70 Md. 205, 14 Am.St.Rep. 355; Tanner, etc., Engine Co. v. Hall, (1888) 5 So. 584, 86 Ala. 305; Rittenhouse v. Leigh, (1850) 57 Miss. 697; Speer v. Bishop, (1874) 24 Ohio St. 598; Prof. Burdick in 30 Cyc. 393.) On the other hand, the weight of authority is to the effect that to be held as a partner he must consent to the holding and that consent is a matter of fact. The act as drafted follows this weight of authority and better reasoning. Morgan v. Farrell, (1890) 20 Atl. 614, 58 Conn. 413, 18 Am.St.Rep. 282; Bishop v. Georgeson, (1871) 60 Ill. 484; Thompson v. Toledo First Nat. Bank, (1884) 4 S.Ct. 689, 111 U.S. 529, 28 U.S.(L.Ed.) 507; Fisher v. A. Y. McDonald Co., (1899) 85 Ill.App. 653; Ihmsen v. Lathrop, (1883) 104 Pa.St. 365.

Another confusion of our existing case law arises when A is held out with his consent as a partner of B who is in business by himself. Here no partnership in fact exists. Can anyone who relies on the representation have priority on the property in the business over those creditors of B who trusted only B and not A and B? The case of Thayer v. Humphrey, (1895) 64 N.W. 1007, 91 Wis. 276, 51 Am.St.Rep. 887, 30 L.R.A. 549, answers this question in the affirmative. Other cases have reached an opposite conclusion. Burdick, Partnership, p. 16 et seq. Clause (b) affirms this opposite conclusion. In the case put A and B would be liable jointly, but as there was in fact no partnership fund, the creditors who thought there was a firm of A and B would have no priority on the assets which B had in his business as distinguished from his other assets.

Compiler's Comments

1995 Amendment: Chapter 449 inserted (1)(b) concerning personal liability of purported partner; in (2), at beginning of first sentence, and (3), at beginning of first and third sentences, inserted "Subject to subsection (1)" and at end of third sentence inserted "as if the person had actually been a partner"; and made minor changes in style.

1993 Amendment: Chapter 238 inserted (3) clarifying the extent of partnership through naming in a statement of authority; inserted (4) regarding lack of continuation of partnership despite failure to file or amend statement of dissociation; and made minor changes in style.

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 16 of the Uniform Partnership Act.

Case Notes

DECISIONS PRIOR TO 1993 REVISION

Partnership by Estoppel Found: Whether or not he was legally a partner, it was proper to consider defendant a partner of the business that had engaged the contractor's services for a remodeling job when defendant: first, during the remodeling, personally assured the contractor that the bill would be paid when the remodeling was completed; and second, informed the contractor that he had signed a lease in which he and the other lessees agreed to pay for any remodeling costs beyond the $25,000 which the lessor had agreed to pay. Price Bldg. Serv., Inc. v. Holms, 214 M 456, 693 P2d 553, 42 St. Rep. 84 (1985).

Partnership by Estoppel — Corporate Shareholders: The shareholders of a corporation can be liable as partners to a person dealing with the corporation if through some action or inaction of the corporation the person reasonably believes he is dealing with a partnership and relies upon that belief in dealing with the corporation. In this case there were various partnerships and a corporation, all with similar names and consisting of the same people, and although some evidence tended to show that operations of the corporation were apparently partnership operations, the existence of a partnership by estoppel is a factual issue, and in this case summary judgment finding such a partnership was improperly granted because factual issues remained. Gamble Robinson Co. v. Carousel Properties, 212 M 305, 688 P2d 283, 41 St. Rep. 1757 (1984).

Effect When No Representation of Partnership: Where defendant, in sale of real estate to plaintiff, introduced plaintiff to builder, whom defendant claimed to be reliable, and builder later defaulted in action brought by plaintiff, the court found no partnership by estoppel between defendant and builder, because no representation of partnership appeared in or could be inferred from the record. Krone v. McCann, 196 M 260, 642 P2d 584, 39 St. Rep. 500 (1982).

Operation and Effect: When defendant furnished working capital of firm, countersigned firm's checks, other members of firm said he was a partner, and defendant himself did not inform plaintiff otherwise, it was question for the jury whether the defendant should be treated as if he were a partner. Gustafson v. Taber, 125 M 225, 234 P2d 471 (1951).

35-10-309. Liability of incoming partner.

Official Comment

The present section eliminates the difficulty which arises when a new partner is admitted without liquidation of firm debts. The present theory of the common law is that a new partnership is formed; all the property of the partnership which existed up to the moment of the entrance of the new partner being transferred to the new partnership. The result of this theory is that if the business fails, the creditors who have extended credit after the admission of the new partner have a prior claim on the assets in the business. The inequitable character of this result has led the courts, where no notice of the change of membership is had by the creditors, to be diligent in finding an assumption of liability on the part of the new partnership of the debts of the old partnership.

Though this section changes the formal statement of the law, which is to the effect that an incoming partner is not liable for debts contracted before his admission, as a matter of fact the section as worded conforms to the actual decisions of the courts, which however, are arrived at by making every effort to impress an assumption of liability on the part of the new partnership, formed as a result of the admission of the new partner, of the debts of the old partnership.

The difficulty, which is overcome by this section as worded, is illustrated by the common case where all the property of the existing partnership is taken over, without notice of any break in the conduct of business, by the new partnership composed of all the members of the existing partnership and the incoming partner; thereby depriving the existing partnership of all its property. Both the existing and the subsequent creditors may believe it is one and the same partnership, but, as stated, such would not be the case under the present law. There is no peculiar equity in the subsequent creditors giving them a right to be preferred, as against the property employed in the business, to the existing creditors. The incoming partner partakes of the benefit of the partnership property and an established business. He has every means of obtaining full knowledge and protecting himself, because he may insist on the liquidation or settlement of existing partnership debts. The creditors have no means of protecting themselves. So as to preserve the present law as nearly as possible it is declared that the liability of the incoming partner shall be satisfied only out of partnership property. It, therefore, results that existing and subsequent creditors have equal rights as against partnership property and the separate property of all the previously existing members of the partnership, while only the subsequent creditors have rights against the separate estate of the newly admitted partner.

The section should be read in connection with [35-10-613, now repealed]. Both sections are based on the principle that where there has been one continuous business the fact that A has been admitted to the business, or C ceased to be connected with it, should not be allowed to cause, as at present, endless confusion as to the claims of the creditors on the property employed in the business; but that all creditors of the business, irrespective of the times when they became creditors and the exact combinations of persons then owning the business, should have equal rights in such property. The recognition of this principle solves one of the most perplexing problems of present partnership law.

Compiler's Comments

1993 Amendment: Chapter 238 near beginning, before "partnership", deleted "existing"; and made minor changes in style.

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 17 of the Uniform Partnership Act.

Case Notes

Personal Liability of Person Not a Partner When Obligations Incurred: The lower court held that the general partner was personally liable for the partnership's debt because the obligations did not arise until the final adjudication in a previous contract action between the parties. The Supreme Court reversed, holding that a general partner is not personally liable for obligations incurred before he becomes a partner. The Supreme Court held that a judgment only controls rights previously existing between the parties. An obligation arises when the contract is executed. The contract was executed prior to the defendant becoming a general partner, so he was not personally liable. Magers v. Mallas, 244 M 117, 796 P2d 571, 47 St. Rep. 1438 (1990).

35-10-312. Action by and against partnership and partners.

Compiler's Comments

1995 Amendment: Chapter 449 in (2), after "partners", inserted "who are personally liable for obligations of the partnership under 35-10-307 or 35-10-629"; inserted (4)(a) concerning partner personally liable to partnership; inserted introductory clause of (4)(b) concerning conditions; at end of (5) inserted reference to 35-10-308(3); and made minor changes in style.

Part 4
Relation of Partners to Partnership and to One Another

Part Case Notes

Suit Against Partnership by Partner: In a suit for property damages by a partner against the partnership, it was error for the District Court to order summary judgment in favor of the partnership without making a determination of whether the partnership was negligent in causing the property damage and whether plaintiff's property was being used to further the business of the partnership. Norick v. Dove Constr., 204 M 57, 662 P2d 1318, 40 St. Rep. 660 (1983).

Suit Against Partnership by Partner's Spouse: The spouse of one general partner may sue the partnership in tort for her individual property loss. Norick v. Dove Constr., 204 M 57, 662 P2d 1318, 40 St. Rep. 660 (1983).

35-10-401. Partner's rights and duties.

Compiler's Comments

1995 Amendment: Chapter 449 in (1) and (2) inserted last sentence concerning limitations on personal liability for charges; and inserted last sentence of (3) limiting personal liability for indemnification.

1993 Amendment: Chapter 238 substituted present (1) and (2) regarding partner accounts for former language that read: "The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules: (1) Each partner shall be repaid his contributions whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits"; in (3), after "payments", inserted "reasonably" and before "liabilities" deleted "personal"; in (4), after "contribute", deleted "shall be paid interest from the date of the payment or advance"; substituted (5) concerning a payment constituting a loan for former language that read: "A partner shall receive interest on the capital contributed by him only from the date when repayment should be made"; inserted (7) restricting use and possession of partnership property; inserted (11) regarding effect of partnership obligations on other persons; and made minor changes in style.

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 18 of the Uniform Partnership Act.

Case Notes

DECISIONS AFTER 1993 REVISION

Allocation of Referral Fee Among Law Partners — Summary Judgment Proper: Attorney Frampton received a large settlement fee in a personal injury case that was referred to him personally. Although he and one other partner did all the work on the case, Frampton gave each of the other partners a $25,000 bonus but kept his share of the settlement. One of the partners, Phelps, did no work on the case but was dissatisfied with the bonus and sued Frampton, asserting that his share should have been $120,000. Phelps asserted that Frampton breached the firm's written contract, violated partnership laws, breached an oral contract to share a substantial portion of the fee, breached the covenant of good faith and fair dealing, breached the fiduciary duty, and should have established a constructive trust because the fee was not Frampton's sole property and Frampton would be unjustly enriched by keeping the fee. The District Court granted summary judgment to Frampton on all the claims, and Phelps appealed. The Supreme Court examined each claim and affirmed. An unambiguous partnership agreement controlled the fee allocation. Although the District Court erred in finding that no covenant of good faith and fair dealing existed, Frampton did not breach the covenant because Phelps was not deprived of a benefit or justified expectation created by the partnership agreement. Phelps did not work on the case and was not entitled to a percentage of the fee under the agreement, and any expectation that Phelps had of receiving a share was unjustified. Additionally, the claim that Phelps had for breach of the written contract was directed at acts or omissions of the firm, and Phelps was barred from bringing claims against the firm by a signed release. Phelps v. Frampton, 2007 MT 263, 339 M 330, 170 P3d 474 (2007).

Charging Partnership More Interest Than Amount Paid on Partnership Loan Considered Adverse to Partnership: A partner, acting unilaterally and with no business reason, paid off a partnership loan carrying a 9.25% interest rate and then sought to charge the partnership 10% and keep the profit. The District Court ordered that the partner be paid 9.25% on the loan, and the partner appealed. The Supreme Court held that ordering the partner to be paid 10% interest would be inequitable and unlawful and that the partner's action constituted dealing with the partnership as a party with an adverse interest in violation of the duty of good faith and fair dealing for a partner. The District Court was affirmed. McCormick v. Brevig, 2007 MT 195, 338 M 370, 169 P3d 352 (2007).

No Breach of Partnership Duty of Loyalty and Care When Partnership Property Accounted For: One partner transferred a partnership-owned tractor to a corporation owned by his sons, allowed the sons limited use of other partnership property without charging rent, and used personal credit cards for items for which the partnership paid. The other partner contended that this constituted conversion of partnership property and a breach of the duty of loyalty and duty of care to the partnership. The District Court found no conversion or breach of duty, and the Supreme Court affirmed. Under 35-10-405, a partner has a duty to account for partnership property or benefits received from the use or appropriation of the property, and here a proper accounting was made. The tractor was paid for, the use of other partnership property was minimal, and personal credit card expenses were accounted for separately from partnership charges. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

DECISIONS PRIOR TO 1993 REVISION

Agreement to Convey Partnership Property Void for Lack of Consideration — Agreement to Fund and Forbearance in Dissolving Partnership Held Insufficient: Marsha and Mac formed M&M Walkers, a partnership for the breeding, raising, training, and marketing of Tennessee Walker horses. Their partnership agreement was oral and was sealed with a handshake. When Marsha became concerned about the amount of time and money that she was putting into the partnership, Mac executed a written conveyance of his share of partnership property, which said that if anything happened to him, Marsha was to get all the partnership property. After Mac died, Marsha tried to enforce Mac's written statement against his estate, but the District Court held the statement to be invalid for lack of consideration. The Supreme Court held that while the written instrument is presumptive evidence of consideration, that presumption could be rebutted by Mac's estate, which sought to invalidate the statement. Marsha contended that her agreement to continue funding the partnership was sufficient consideration, but the Supreme Court held that because she had a legal duty to contribute to the partnership in accordance with her share of the profits, her "agreement" was not sufficient consideration. Marsha also argued that her forbearance from dissolving the partnership was also sufficient consideration. Citing Rudio v. Yellowstone Merchandising Corp., 200 M 537, 652 P2d 1163 (1982), the Supreme Court noted that it had held that forbearance is sufficient consideration only if there is an agreement to forbear, and in this case, there was no evidence in the record that Marsha had made such an agreement with Mac. The Supreme Court therefore affirmed the District Court's finding that there was insufficient consideration to support Mac's written conveyance of the partnership's property to Marsha. Nitzel v. Wickman, 283 M 304, 940 P2d 451, 54 St. Rep. 684 (1997). See also St. v. Keys, 1999 MT 10, 293 M 81, 973 P2d 812, 56 St. Rep. 44 (1999).

Lack of Element of Intent to Associate as Partners: Direct testimony that one of the alleged partners did not wish to be associated in a partnership, coupled with evidence that the brand used to identify the business was never transferred to the partnership, that the partnership name was never registered with the Secretary of State, and that the parties filed separate rather than partnership tax returns mitigated against a clear manifestation of the parties' intent to form a partnership. Tondu v. Akerley, 259 M 194, 855 P2d 116, 50 St. Rep. 754 (1993).

Liability of Partners for Attorney Fees Incurred on Behalf of Partnership: The partnership attorney represented the partnership in a legal matter until one partner, Doting, hired her own attorney, who subsequently filed an answer on Doting's behalf. The partnership attorney continued as counsel for the other partners, Trunks. Trunks maintained that the partnership should pay all fees and costs of the partnership attorney because Doting's attorney merely adopted and ratified the partnership attorney's work on the case. However, the District Court properly found that Trunks should pay Doting one-half of the sums paid by the partnership to the partnership attorney for representation of the partnership after Doting's attorney filed an answer for Doting in the suit. Doting v. Trunk, 253 M 350, 833 P2d 1028, 49 St. Rep. 429 (1992).

Partner Failing to Keep Records Estopped From Objecting to Court's Division of Property: The defendant in a partnership dissolution action objected to the lower court's ruling that the partnership property be divided equally. The Supreme Court held that the defendant was estopped from objecting to the property division because it had been his responsibility to keep the partnership records and he had failed to do so. Frank v. Birky, 250 M 11, 817 P2d 696, 48 St. Rep. 850 (1991).

Ex-Partner Not Liable for Partnership's Debts: The defendants argued that the plaintiff, a former partner, was liable for a portion of the partnership's debts regardless of the date of the dissolution of the partnership. The Supreme Court held that under this section, a partner's rights and duties are subject to any agreement between the partners. The partners had agreed to reimburse the plaintiff for his original contribution, and therefore he was not liable for any debts incurred after that time. Westfall v. Anderson, 244 M 113, 795 P2d 976, 47 St. Rep. 1431 (1990).

No Wages for Winding Up Affairs: The plaintiff, in a partnership dissolution action, argued that the lower court erred in not awarding him wages for winding up the partnership's affairs. The Supreme Court ruled that this section clearly states that wages may only be given for winding up the partnership's affairs in those cases where one of the partners has died or where the agreement provides for wages. Mehl v. Mehl, 241 M 310, 786 P2d 1173, 47 St. Rep. 292 (1990).

Wages Paid to One Partner's Children: The plaintiff, in an action for dissolution of a partnership, argued that the lower court erred in holding that wages paid to the other partner's children were partnership expenditures. The plaintiff alleged that the children had been hired because the defendant's health prevented him from doing his share of the work and that therefore the amount paid his children should have been deducted from the defendant's share of the assets. The Supreme Court ruled that the plaintiff had acquiesced to the arrangement and had shared in the resultant tax advantage; therefore, the wages were properly designated a partnership expense. Mehl v. Mehl, 241 M 310, 786 P2d 1173, 47 St. Rep. 292 (1990).

Partnership Agreement Inadequate to Cover Situation — Section Prevails: Felton Investment Group was a retirement benefit investment partnership, with partners consisting of employees of Felton Construction Company. In its partnership agreement, persons who voluntarily terminated employment or who were discharged for misconduct received contribution refunds and those who were involuntarily terminated from employment because of disability, death, or retirement retained a full interest in the partnership. The plaintiffs in this action were involuntarily terminated for refusing to disassociate with their union—a termination that the District Court determined to be a contingency not covered by the partnership agreement. Thus, the provisions of this section control repayment of contributions by providing for a pro rata repayment to the partners. Felton Inv. Group v. Taurman, 222 M 238, 722 P2d 1135, 43 St. Rep. 1228 (1986).

Finding of Partnership — Splitting of Profits, Advertising, and Merging of Resources and Talents — Lack of Intent Not Controlling: Father and son shared equipment as needed, stored seed potatoes together in son's warehouse, advertised under the name of "Wilbur Kimm and Son", and split profits in a joint account. Son's insurer sued father's insurer for contribution for claims paid that were filed by buyers against son for crop damages caused by seeds treated by son. District Court found no partnership existed, primarily based on father's and son's testimony that they did not intend for a partnership to exist. The Supreme Court reversed and ordered judgment granting plaintiff insurer's motion for summary judgment. The Supreme Court held that splitting of profits, coupled with advertising under a joint name and the merging of resources and talents for the growing of the potatoes, preponderated against the District Court's finding of no partnership. Truck Ins. Exch. v. Indus. Indem. Co., 212 M 297, 688 P2d 1243, 41 St. Rep. 1835 (1984).

Default in Joint Venture: Absent a default agreement, the members of a joint venture cannot forfeit the rights of a member and exclude him from participation in the enterprise because he is in default. The remedy for members not in default is an action for rescission or breach of contract. Murphy v. Redland, 178 M 296, 583 P2d 1049 (1978).

Agreement Providing for Termination on Project Completion — Division of Assets — Renegotiation Costs: When partnership agreement provided for termination of partnership upon completion of project and equal division of assets and dividends, three partners had no right to $8,500 paid to other two partners as a part of renegotiation cost for excess profits of $35,000. The $8,500 was paid to the two partners and deducted from total renegotiation cost of $35,000 in order to secure to those two partners tax benefits which they would not be able to obtain as a refund, while the other three partners could claim as a refund their tax benefits after payment of $26,500 to federal government. Pappin v. Dudley, 125 M 248, 236 P2d 280 (1951).

35-10-402. Partner's right to information.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner's right to information for former language that read: "The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 19 of the Uniform Partnership Act.

35-10-403. Duty of partners to render information.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner's duty to provide information for former language that read: "Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 20 of the Uniform Partnership Act.

Case Notes

Finality of Judgment Requirement in Applying Collateral Estoppel: In a 2003 suit, William sued his brother Otto on the issue of partnership assets, and then in 2004, when that case was still pending, William filed claims against Otto for further misappropriating business assets and against Otto's wife Frances for conspiring to assist Otto. The District Court held that the 2004 case was barred by collateral estoppel, and on appeal, the Supreme Court affirmed. It is appropriate to accord finality to an earlier judgment that contains findings of fact that definitively resolve all new allegations and legal theories included in a later complaint, and the 2004 judgment was sufficiently final for applying collateral estoppel. The determinative fact of whether and to what extent Frances misappropriated partnership funds without Otto's knowledge was actually and necessarily decided in the 2003 case. Because the precise issue or allegation that provided the basis for each of William's 2004 theories of recovery was already presented and decided in 2003, the District Court properly found that the 2004 suit was barred by collateral estoppel. Baltrusch v. Baltrusch, 2006 MT 51, 331 M 281, 130 P3d 1267 (2006). See also Martelli v. Anaconda-Deer Lodge County, 258 M 166, 852 P2d 579 (1993), Dowell v. Dept. of Public Health and Human Services, 2006 MT 55, 331 M 305, 132 P3d 520 (2006), and Adams v. Two Rivers Apartments, LLLP, 2019 MT 157, 396 Mont. 315, 444 P.3d 415, finding that a binding settlement dismissing a case with prejudice satisfied the final judgment requirement.

35-10-405. General standards of partner's conduct.

Official Comment

[Subsection] (1) removes a doubt in the existing law. At present it is not clear whether the obligation to account where the partner has money or other property in his hands, is or is not an obligation in the nature of a trust. For instance: A, B and C are partners; A, as a result of a transaction connected with the conduct of the partnership, has in his hands, so that it may be traced, a specific sum of money or other property. A is insolvent. Is the claim of the partnership against A a claim against him as an ordinary creditor, or is it a claim to the specific property or money in his hands? The words "and hold as trustee for the partnership any profits" indicate clearly that the partnership can claim as their own any property or money that can be traced.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner conduct standards for former language that read: "(1) Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 21 of the Uniform Partnership Act.

Case Notes

DECISIONS AFTER 1993 REVISION

No Manipulation or Concealment — No Breach of Fiduciary Duty: Two brothers operated a partnership for 33 years before mutually deciding to dissolve the partnership in 2013. The brothers engaged in mediation and entered a settlement agreement that covered many of the partnership's assets. In 2020, the District Court issued an order dividing the remaining partnership assets and finding that the settlement agreement was valid and enforceable despite one brother's argument that it should be invalidated due to material mistake of fact. That brother appealed to the Supreme Court, arguing that the District Court erred by not finding that his brother had breached his fiduciary duty by using partnership funds to construct his personal residence and for other personal expenses, allegedly without the appellant brother's knowledge and in express violation of agreements to the contrary. The Supreme Court found that although the appellee brother did use partnership money to pay personal expenses, there was no violation of fiduciary duty because he had no intent to defraud or deceive, the appellant brother always had access to the partnership records, there was no allegation that the appellee brother's use of partnership funds was detrimental to the partnership, and the appellee brother did not attempt to manipulate the records or otherwise conceal his activities. Jackpot Farms, Inc. v. Johns Farms, Inc., 2020 MT 311, 402 Mont. 250, 477 P.3d 320.

Allocation of Referral Fee Among Law Partners — Summary Judgment Proper: Attorney Frampton received a large settlement fee in a personal injury case that was referred to him personally. Although he and one other partner did all the work on the case, Frampton gave each of the other partners a $25,000 bonus but kept his share of the settlement. One of the partners, Phelps, did no work on the case but was dissatisfied with the bonus and sued Frampton, asserting that his share should have been $120,000. Phelps asserted that Frampton breached the firm's written contract, violated partnership laws, breached an oral contract to share a substantial portion of the fee, breached the covenant of good faith and fair dealing, breached the fiduciary duty, and should have established a constructive trust because the fee was not Frampton's sole property and Frampton would be unjustly enriched by keeping the fee. The District Court granted summary judgment to Frampton on all the claims, and Phelps appealed. The Supreme Court examined each claim and affirmed. An unambiguous partnership agreement controlled the fee allocation. Although the District Court erred in finding that no covenant of good faith and fair dealing existed, Frampton did not breach the covenant because Phelps was not deprived of a benefit or justified expectation created by the partnership agreement. Phelps did not work on the case and was not entitled to a percentage of the fee under the agreement, and any expectation that Phelps had of receiving a share was unjustified. Additionally, the claim that Phelps had for breach of the written contract was directed at acts or omissions of the firm, and Phelps was barred from bringing claims against the firm by a signed release. Phelps v. Frampton, 2007 MT 263, 339 M 330, 170 P3d 474 (2007).

Finality of Judgment Requirement in Applying Collateral Estoppel: In a 2003 suit, William sued his brother Otto on the issue of partnership assets, and then in 2004, when that case was still pending, William filed claims against Otto for further misappropriating business assets and against Otto's wife Frances for conspiring to assist Otto. The District Court held that the 2004 case was barred by collateral estoppel, and on appeal, the Supreme Court affirmed. It is appropriate to accord finality to an earlier judgment that contains findings of fact that definitively resolve all new allegations and legal theories included in a later complaint, and the 2004 judgment was sufficiently final for applying collateral estoppel. The determinative fact of whether and to what extent Frances misappropriated partnership funds without Otto's knowledge was actually and necessarily decided in the 2003 case. Because the precise issue or allegation that provided the basis for each of William's 2004 theories of recovery was already presented and decided in 2003, the District Court properly found that the 2004 suit was barred by collateral estoppel. Baltrusch v. Baltrusch, 2006 MT 51, 331 M 281, 130 P3d 1267 (2006). See also Martelli v. Anaconda-Deer Lodge County, 258 M 166, 852 P2d 579 (1993), Dowell v. Dept. of Public Health and Human Services, 2006 MT 55, 331 M 305, 132 P3d 520 (2006), and Adams v. Two Rivers Apartments, LLLP, 2019 MT 157, 396 Mont. 315, 444 P.3d 415, finding that a binding settlement dismissing a case with prejudice satisfied the final judgment requirement.

Final Judgment in Prior Claim Prerequisite for Application of Res Judicata: In a 2003 suit, William sued his brother Otto on the issue of partnership assets, and then in 2004, when that case was still pending, William filed claims against Otto for further misappropriating business assets and against Otto's wife Frances for conspiring to assist Otto. The District Court held that the 2004 case was barred by res judicata because Otto and Frances were in privity and the issues in both cases were identical. On appeal, the parties argued vigorously as to whether the elements of res judicata were met, and William even conceded that the 2004 suit was barred as to claims against Otto. The Supreme Court disagreed. Because final judgment was not entered in the 2003 case, despite William's acquiescence, res judicata did not bar any claims raised in the 2004 case. Baltrusch v. Baltrusch, 2006 MT 51, 331 M 281, 130 P3d 1267 (2006). See also Adams v. Two Rivers Apartments, LLLP, 2019 MT 157, 396 Mont. 315, 444 P.3d 415, finding that a binding settlement dismissing a case with prejudice satisfied the final judgment requirement.

No Breach of Partnership Duty of Loyalty and Care When Partnership Property Accounted For: One partner transferred a partnership-owned tractor to a corporation owned by his sons, allowed the sons limited use of other partnership property without charging rent, and used personal credit cards for items for which the partnership paid. The other partner contended that this constituted conversion of partnership property and a breach of the duty of loyalty and duty of care to the partnership. The District Court found no conversion or breach of duty, and the Supreme Court affirmed. Under this section, a partner has a duty to account for partnership property or benefits received from the use or appropriation of the property, and here a proper accounting was made. The tractor was paid for, the use of other partnership property was minimal, and personal credit card expenses were accounted for separately from partnership charges. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

DECISIONS PRIOR TO 1993 REVISION

Partner Assuming Responsibility as Trustee: If a partner assumes responsibility of management and operation of partnership business and takes over the accounts, books, and bank accounts thereof, he acts as trustee for the partnership and his books and accounts must be full, true, and exact and he cannot defeat rights of his copartner to true settlement and proper distribution of assets by failing to keep full and complete accounts. Hansen v. Hansen, 130 M 175, 297 P2d 879 (1956).

35-10-406. Continuation of partnership beyond definite term or particular undertaking.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partnership continuation for former language that read: "(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs is prima facie evidence of a continuation of the partnership."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 23 of the Uniform Partnership Act.

Case Notes

Partners' Failure to Comply With Agreement Terms Resulting in No Explicit Partnership Value — Fair Market Value Properly Ascribed: A 1968 agreement established the value of a partnership at $47,790.30 and required the partners to arrive annually at a new and updated value that would serve for the following year as the value of the partnership. However, the partners never reestablished any different value during the duration of the partnership. After one partner died in 1995, the District Court properly concluded that fair market value at the time of death should apply because the partners failed to comply with the terms of the agreement and thus were left without an explicitly agreed-upon value. In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767, 55 St. Rep. 1251 (1998), following Chapman v. Dunnegan, 665 SW 2d 643 (Mo. Ct. App. 1984).

35-10-409. Remedies of partnership and partners.

Case Notes

When Filing of Claim Required Following Withdrawal From Partnership When Partnership Agreement Applies: A physician withdrew from partnership with defendant medical clinic in September 2004, and the clinic offered to pay the physician the amount due under the partnership agreement. The physician did not accept payment at that time but subsequently filed an action for further payment in February 2006. The clinic asserted that the claim was time barred because it was not filed within 120 days after the offer of payment was made. The District Court held that the claim was not time barred, and on appeal the Supreme Court concurred. Statutes allow 120 days to bring a claim when a dissociating partner may maintain an action to determine how much is owed the partner when seeking to have the partner's interest in the partnership purchased, but it is not clear whether that includes a case when the amount due is determined by reference to a partnership agreement or whether the 120-day limitation applies only when no partnership agreement exists and the amount must be set by a court. Because a substantial question existed regarding whether the 120-day limit applied, the court resolved the doubt in accordance with public policy in favor of a longer period of limitation. The District Court's holding that the claim was not time barred was thus affirmed. Mungas v. Great Falls Clinic, LLP, 2009 MT 426, 354 M 50, 221 P3d 1230 (2009).

Liquidation of Partnership Assets Required Under Court-Ordered Partnership Dissolution — Full Accounting Required: The partnership agreement between partners in a family farm and ranch operation did not apply to a court-ordered dissolution pursuant to 35-10-624, so default statutory rules applied. To avoid breakup of the family farm, the District Court ordered that one partner buy out the other partner's share. However, in a court-ordered dissolution, 35-10-629 requires liquidation of the partnership assets with any surplus remaining after creditors are paid to be paid in cash to the partners in accordance with their right to distribution. Thus, the District Court committed reversible error in adopting a judicially created alternative to the statutory winding-up procedure. Further, because asset liquidation was required, the District Court was required to perform a detailed accounting of the partnership affairs. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004), followed in Pankratz Farms, Inc. v. Pankratz, 2004 MT 180, 322 M 133, 95 P3d 671 (2004). On remand, following a complete partnership accounting, the District Court held that each party owned a 50% interest in the partnership but that one partner had not paid the partnership for the entire 50% interest. The court ordered that partner to pay for the unpaid 25% interest by establishing a deficit capital account. The partner appealed on grounds that the 2004 McCormick decision (McCormick II) established as the law of the case that the partner owned a 50% interest and that the entire interest was paid. The law of the 2004 case did establish the 50% interests, but the complete accounting showed that the partner still owed a 25% interest that was to be deducted from that partner's share of the proceeds of the sale of the partnership, and the District Court did not err in so holding. In addition, it was the partner's complaint about the inadequacy of the initial accounting that caused the remand in McCormick II, and the partner benefited by the new and complete accounting, so it was not error to charge the partner one-half of the special master's fee. McCormick v. Brevig, 2007 MT 195, 338 M 370, 169 P3d 352 (2007). While the appeal in this case (2007 MT 195, McCormick III) was pending, sale of the partnership took place. Both partners subsequently appealed orders of the District Court concerning how the sale was to be conducted. However, because of the results of the sale, the issues related to the conduct of the sale were decided between the parties, so the appeal was moot. McCormick v. Brevig, 2007 MT 196, 338 M 387, 165 P3d 1124 (2007), following Walker v. St., 2003 MT 134, 316 M 103, 68 P3d 872 (2003).

Part 5

Property Rights of a Partner

Part Case Notes

DECISIONS UNDER CURRENT LAW

Property Not Assignable Without Consent of All Partners: Two partners, without the knowledge or consent of the third partner who had instigated an action to dissolve the partnership, executed a trust indenture assigning marina property owned by the partnership as collateral for the loan. The Supreme Court held that the marina was partnership property and that the two partners had no authority to bind the partnership or encumber their individual one-third interests in the partnership property without the consent of all partners. The savings and loan had no interest in the property. Schrammeck v. Fed. Sav. & Loan Ins. Corp. 258 M 391, 853 P2d 702, 50 St. Rep. 580 (1993).

DECISIONS UNDER FORMER LAW

Partnership Interest in Property No Defense to Charge of Theft: Kuntz claimed that he could not be convicted of theft of partnership property because under Montana common law, a partner cannot be guilty of stealing partnership property because a partner's interest extends to every portion of partnership property. He also argued that nothing in the Uniform Partnership Act in effect prior to the 1993 revision superseded the common law. The Supreme Court ruled that Kuntz was entitled only to an interest in the property for partnership purposes and that state criminal law specifically abandoned the common-law theory and made it a crime to steal property in which an individual has an interest but to which the individual is not entitled. St. v. Kuntz, 265 M 253, 875 P2d 1034, 51 St. Rep. 502 (1994).

Breach of Joint Venture Fiduciary Trust — Award of Investment Plus Interest Affirmed: Kelly and Rust agreed to purchase land, subdivide it, and sell it at a profit. Rust advanced Kelly $4,000 as one-half the purchase price. Kelly paid the $4,000 balance and recorded the deed, but did not include Rust on the recorded deed. Rust moved from the area and later attempted, through his agent, to purchase Kelly's interest in the land. The agent was told the land was already sold, so Rust brought an action to recover his investment plus interest. The trial court properly held that: (1) the parties had entered into a joint venture; (2) Kelly was required in equity to hold the property in a constructive trust; (3) Kelly breached the joint venture fiduciary duty and attempted to deprive Rust of his interest in the property; and (4) Rust was entitled to return of his $4,000 investment plus interest. Rust v. Kelly, 228 M 220, 741 P2d 786, 44 St. Rep. 1471 (1987).

Death of Partner — Disposition of Property Held Jointly by Partners: Robert and William, brothers, opened a joint checking account in 1947, paid all ranch expenses through the account, put all ranch income in the account, and equally split net profits. All cattle were branded with either of two brands, each of which was registered in the name of "William Palmer or Robert Palmer". The brothers were also joint tenants in a commodity brokerage account. The Supreme Court held that the cattle and both accounts were partnership property not held in joint tenancy and remained so upon Robert's death. Thus, they did not pass to William as the surviving joint tenant; rather, they remained in the partnership for the purpose of winding up the partnership and paying its liabilities, after which William must account to Robert's survivor, his widow, for Robert's share of the partnership. By its very nature, partnership property must be treated differently than property of individuals, including property held by individuals as joint tenants but who are not in partnership. This rule applies regardless of the formal legal manner in which the property is held. This is a rule of equity developed over hundreds of years and codified in the Uniform Partnership Act. In re Estate of Palmer, 218 M 285, 708 P2d 242, 42 St. Rep. 1585 (1985), followed in Fiedler v. Fiedler, 266 M 133, 879 P2d 675, 51 St. Rep. 691 (1994).

35-10-505. Partner's transferable interest subject to charging order.

Official Comment

[Section 35-10-505(1)] is taken from section 23(2) of the English Partnership Act. The operation of the provision has given great satisfaction. The judgment creditor does not acquire any greater rights than the debtor is entitled to for his own benefit. [Sutton v. English, etc., Produce Co., [1902] 2 Ch. 502; Howard v. Sadler, [1893] 1 Q.B. 1; Cooper v. Griffin, [1892] 1 Q.B. 740; Scott v. Hastings, (1858) 4 Kay & J. 633].

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding partner's transferable interest for former language that read: "(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree or any other court may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership and make all other orders, directions, accounts, and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) with separate property, by any one or more of the partners; or

(b) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws as regards his interest in the partnership."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 28 of the Uniform Partnership Act.

35-10-506. Partner's application to discharge attachment — undertaking.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Not Uniform Act: This section was not derived from the Uniform Partnership Act.

Case Notes

Unconstitutional Application: The Writ of Attachment statute, as applied, was violative of the notice and opportunity to be heard requirements as guaranteed by the due process clause of the United States Constitution. Williams v. Matovich, 172 M 109, 560 P2d 1338 (1977).

35-10-510. Transfer of partner's transferable interest.

Case Notes

Question of Validity of Offset Moot — Dismissal of Counterclaim and Motion for Partial Summary Judgment Proper: A promissory note related to a stock sale provided for acceleration upon notice of default. Following defendants' default, plaintiff paid an escrow agent an amount that satisfied plaintiff's obligation under the sale agreement, and the agent then deducted from that payment the amount owed by defendants under the promissory note, transferred the balance back to plaintiff in satisfaction of the note, and forwarded the balance of plaintiff's payment to defendants. Defendants filed a counterclaim and moved for partial summary judgment based on the validity of the offset. The District Court dismissed both, and defendants appealed, but the Supreme Court affirmed. Because both parties received the money owed to them, and because the acceleration and offset were appropriate, the issues raised by defendants lost any practical purpose. The issue of the validity of the offset was moot, and the Supreme Court declined to address the issue further. Lewistown Propane Co. v. Moncur, 2002 MT 349, 313 M 368, 61 P3d 780 (2002).

Part 6

Dissolution and Winding Up

Part Case Notes

DECISIONS UNDER CURRENT LAW

Trial Court Selection of One Appraisal of Partnership Property Over Another Not Erroneous: Pursuant to a court order, partnership property was to be sold and the proceeds divided between two partners. Each partner desired to keep certain property, so in 2001 they agreed to have all the property appraised and have each partner purchase the desired equipment from the other. Partner Otto was dissatisfied with the appraisal and hired another appraiser to value the property. Despite having sought and received the second appraisal, Otto did not pay partner William for the property. About 2 years later, Otto hired a third appraiser, who completed an appraisal in 2006. In its post-2006 trial order, the District Court ordered Otto to pay William the value established in the second appraisal. Otto contended on appeal that the court erred in choosing the second appraisal over the third. The Supreme Court affirmed. The District Court's selection was a factual as opposed to a legal decision, and because there was substantial credible evidence to support the factual decision, the Supreme Court declined to disturb it. Baltrusch v. Baltrusch, 2008 MT 245, 344 M 489, 190 P3d 1034 (2008).

Proper Calculation of Fractional Partnership Interest — Attorney Fees Based on Fractional Interest Affirmed: Six brothers had equal interests in a farming operation. Four of the brothers sought to buy out the interests of the other two. One brother, Marvin, refused to sell, but the other, Larry, agreed, so Larry's interest was divided between the four participating brothers, giving each an additional 4% ownership interest. The four then mortgaged the partnership's interest without Marvin's consent. In winding up the partnership, the District Court found that Marvin still had a one-sixth interest and that because he was aware of Larry's buyout but declined to participate, Marvin was not entitled to any portion of the buyout. Marvin appealed on grounds that the District Court miscalculated his fractional interest because mortgaging the partnership interest without his consent was a breach of duty and the partnership agreement, but the Supreme Court affirmed. Marvin could not demonstrate that he was damaged by the breach of duty and the partnership agreement. Marvin's interest was not mortgaged, nor did Marvin become obligated to Larry through the buyout. Thus, the District Court properly calculated Marvin's fractional partnership interest. Further, because Marvin retained a one-sixth interest, the District Court correctly charged Marvin with one-sixth of the attorney fees incurred in the dissolution. Pankratz Farms, Inc. v. Pankratz, 2004 MT 180, 322 M 133, 95 P3d 671 (2004).

No Error in Failure to Consider Tax Implications on Partner Who Took Loans From Partnership When Dividing Partnership Interests: When determining how to equally divide partnership assets between two partners, the District Court did not account for the tax implications related to loans taken by one partner from the partnership, which that partner contended was error because the tax obligations related to the loans, as opposed to wage income, and would result in that partner receiving less money. The Supreme Court found no error in the District Court's calculations. If the partner had taken the income in wages rather than in loans, the taxes would have been paid immediately and there would be no controversy. The court declined to hold one partner responsible for tax implications based on the monetary decisions of the other. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

DECISIONS UNDER FORMER LAW

Court Dissolution of Partnership Prior to Winding Up — Equity: Even though certain contract receivables would not be paid in full during the 60-day period ordered for winding up the partnership affairs, the District Court properly ordered the partnership dissolved as a matter of equity, given the extreme animosity between the parties and the fact that dissolution does not terminate a partnership for purposes of winding up and suing and being sued while winding up. Doting v. Trunk, 253 M 350, 833 P2d 1028, 49 St. Rep. 429 (1992).

Split of Expenses Related to Dissolution Proceeding: Noting that each party should pay for its own defense in a dissolution action, the District Court properly held each partner liable for paying one-half of the amount attributable to legitimate partnership expenses incurred as the result of the dissolution. Doting v. Trunk, 253 M 350, 833 P2d 1028, 49 St. Rep. 429 (1992).

When Reason for Partnership Ceases, Damages and Attorney Fees Not Payable Upon Dissolution: The District Court correctly found that Doting owed no damages or attorney fees to Trunks as the result of the dissolution of the parties' partnership because: (1) the reason for the partnership ceased to exist when the partnership assets were sold; (2) Trunks had moved out of state; and (3) the partnership agreement Doting was alleged to have violated did not provide for dissolution, only buyout. Doting v. Trunk, 253 M 350, 833 P2d 1028, 49 St. Rep. 429 (1992).

Proper Date of Valuation of Deceased Partner's Interest: Where one partner died and the surviving partners continued the business, continued to graze cattle on the partnership land, and did not elect to liquidate partnership assets, the business was continued under 35-10-613(2) and (3) (now repealed). Therefore, 35-10-614 (now repealed) applies, and the deceased partner's interest is properly valued as of the date of his death. Webb v. Wolfe, 230 M 322, 749 P2d 531, 45 St. Rep. 242 (1988).

Death of Partner — Disposition of Property Held Jointly by Partners: Robert and William, brothers, opened a joint checking account in 1947, paid all ranch expenses through the account, put all ranch income in the account, and equally split net profits. All cattle were branded with either of two brands, each of which was registered in the name of "William Palmer or Robert Palmer". The brothers were also joint tenants in a commodity brokerage account. The Supreme Court held that the cattle and both accounts were partnership property not held in joint tenancy and remained so upon Robert's death. Thus, they did not pass to William as the surviving joint tenant; rather, they remained in the partnership for the purpose of winding up the partnership and paying its liabilities, after which William must account to Robert's survivor, his widow, for Robert's share of the partnership. By its very nature, partnership property must be treated differently than property of individuals, including property held by individuals as joint tenants but who are not in partnership. This rule applies regardless of the formal legal manner in which the property is held. This is a rule of equity developed over hundreds of years and codified in the Uniform Partnership Act. In re Estate of Palmer, 218 M 285, 708 P2d 242, 42 St. Rep. 1585 (1985), followed in Fiedler v. Fiedler, 266 M 133, 879 P2d 675, 51 St. Rep. 691 (1994).

Partnership Accounting: When no balance of the partnership business could be arrived at without an accounting and the defendant made all his records available and it was clear from the record that the defendant in good faith had thought there was a loss instead of a profit, interest on the amount due was figured from date of judgment rather than date of termination of partnership. Shidu v. Hollenback, 133 M 265, 322 P2d 325 (1958).

35-10-602. Partnership continues after dissolution.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding continuation of partnership after dissolution for former language that read: "On dissolution the partnership is not terminated but continues until the winding up of partnership affairs is completed."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 30 of the Uniform Partnership Act.

Case Notes

DECISIONS PRIOR TO 1993 REVISION

Termination Reasonable: The Uniform Partnership Act does not require that every transaction be completed before a partnership can be terminated. The District Court did not err in ordering termination of the partnership on the date of final distribution to the parties from the partnership's trust account. Property may be held as trust in common after partnership affairs are settled. An escrow agent could make pro rata distributions to the partners when payments are received on contracts for deed without continuing the partnership. Doting v. Trunk, 259 M 343, 856 P2d 536, 50 St. Rep. 826 (1993).

Court Dissolution of Partnership Prior to Winding Up — Equity: Even though certain contract receivables would not be paid in full during the 60-day period ordered for winding up the partnership affairs, the District Court properly ordered the partnership dissolved as a matter of equity, given the extreme animosity between the parties and the fact that dissolution does not terminate a partnership for purposes of winding up and suing and being sued while winding up. Doting v. Trunk, 253 M 350, 833 P2d 1028, 49 St. Rep. 429 (1992).

Disposition of Assets: When surviving partners of law partnership were unable to agree on distribution of pending cases, an asset of the partnership, and it became necessary to appoint special master to facilitate final dissolution, decision to split returns of unfinished business, two-thirds to partner handling business and one-third to other, was fair. In re Mondale & Johnson, 150 M 534, 437 P2d 636 (1968).

35-10-609. Right to wind up partnership business.

Compiler's Comments

1993 Amendment: Chapter 238 substituted present section regarding winding up partnership after dissolution for former language that read: "Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs. However, any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court."

Severability: Section 62, Ch. 238, L. 1993, was a severability clause.

Application to Existing Relationships: Section 63, Ch. 238, L. 1993, provided: "(1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993."

Source: This section is derived from sec. 37 of the Uniform Partnership Act.

Case Notes

DECISIONS PRIOR TO 1993 REVISION

Right to Possession of Property After Dissolution: In action in claim and delivery brought by partner against third party and involving partnership property acquired by third person after dissolution of partnership by express will of partners, allegations of existence of partnership, subsequent dissolution, and defendant's wrongfully taking possession of property were sufficient to show right to possession and to state cause of action. Rykken v. Black, 136 M 464, 348 P2d 998 (1960).

35-10-616. Events causing partner's dissociation.

Case Notes

No Error in Finding That Partner Did Not Dissociate From Partnership: A partner contended that the other partner dissociated by withdrawing from the partnership through wrongful conduct and should be expelled. The District Court found that no notice was given of an express will to withdraw as a partner, that the partnership agreement did not apply, and that the partner in question had continued to operate the partnership after the alleged dissociation, even to the benefit of the complaining partner. The court's findings were not clearly erroneous, and the court did not err in holding that a wrongful dissociation had not occurred. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004).

No Liability for Unpaid Wage Claim by Former Business Partner: Donald and Gail Peterson owned and operated a bar and casino. When Gail discovered an intimate relationship between Donald and plaintiff who was an employee, she demanded that they leave the establishment, and Gail then operated the business alone. The Petersons agreed to divorce, and as part of the settlement, Donald was allowed to operate the jointly owned business, receive all the profits, and assume all liabilities generated by the operation of the business, and Gail ceased any involvement with the day-to-day operations. Donald and plaintiff continued to operate the business as a couple, but Donald paid plaintiff no wages for 18 months. Gail eventually purchased the business assets and assumed the business debts and liabilities, at which point plaintiff brought a claim against Gail for the unpaid wages. An administrative judge held that the Petersons were jointly and severally liable as partners. The District Court upheld the decision, and Gail appealed. The Supreme Court noted that all four criteria in MacArthur Co. v. Stein, 282 M 85, 934 P2d 214 (1997), must be established to prove the existence of a partnership. Here, three of the four criteria did not exist after Gail relinquished control of the business to Donald. Because Gail was not a partner during the time that the wage claim arose, she bore no responsibility for wages owing during the period in question. In re Wage Claim of Harker v. Peterson, 2003 MT 175, 316 M 393, 72 P3d 949 (2003). See also In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767 (1998).

Death of Partner — Disposition of Property Held Jointly by Partners: Robert and William, brothers, opened a joint checking account in 1947, paid all ranch expenses through the account, put all ranch income in the account, and equally split net profits. All cattle were branded with either of two brands, each of which was registered in the name of "William Palmer or Robert Palmer". The brothers were also joint tenants in a commodity brokerage account. The Supreme Court held that the cattle and both accounts were partnership property not held in joint tenancy and remained so upon Robert's death. Thus, they did not pass to William as the surviving joint tenant; rather, they remained in the partnership for the purpose of winding up the partnership and paying its liabilities, after which William must account to Robert's survivor, his widow, for Robert's share of the partnership. By its very nature, partnership property must be treated differently than property of individuals, including property held by individuals as joint tenants but who are not in partnership. This rule applies regardless of the formal legal manner in which the property is held. This is a rule of equity developed over hundreds of years and codified in the Uniform Partnership Act. In re Estate of Palmer, 218 M 285, 708 P2d 242, 42 St. Rep. 1585 (1985).

35-10-618. Effect of partner's dissociation.

Case Notes

When Filing of Claim Required Following Withdrawal From Partnership When Partnership Agreement Applies: A physician withdrew from partnership with defendant medical clinic in September 2004, and the clinic offered to pay the physician the amount due under the partnership agreement. The physician did not accept payment at that time but subsequently filed an action for further payment in February 2006. The clinic asserted that the claim was time barred because it was not filed within 120 days after the offer of payment was made. The District Court held that the claim was not time barred, and on appeal the Supreme Court concurred. Statutes allow 120 days to bring a claim when a dissociating partner may maintain an action to determine how much is owed the partner when seeking to have the partner's interest in the partnership purchased, but it is not clear whether that includes a case when the amount due is determined by reference to a partnership agreement or whether the 120-day limitation applies only when no partnership agreement exists and the amount must be set by a court. Because a substantial question existed regarding whether the 120-day limit applied, the court resolved the doubt in accordance with public policy in favor of a longer period of limitation. The District Court's holding that the claim was not time barred was thus affirmed. Mungas v. Great Falls Clinic, LLP, 2009 MT 426, 354 M 50, 221 P3d 1230 (2009).

35-10-619. Purchase of dissociated partner's interest.

Case Notes

When Filing of Claim Required Following Withdrawal From Partnership When Partnership Agreement Applies: A physician withdrew from partnership with defendant medical clinic in September 2004, and the clinic offered to pay the physician the amount due under the partnership agreement. The physician did not accept payment at that time but subsequently filed an action for further payment in February 2006. The clinic asserted that the claim was time barred because it was not filed within 120 days after the offer of payment was made. The District Court held that the claim was not time barred, and on appeal the Supreme Court concurred. Statutes allow 120 days to bring a claim when a dissociating partner may maintain an action to determine how much is owed the partner when seeking to have the partner's interest in the partnership purchased, but it is not clear whether that includes a case when the amount due is determined by reference to a partnership agreement or whether the 120-day limitation applies only when no partnership agreement exists and the amount must be set by a court. Because a substantial question existed regarding whether the 120-day limit applied, the court resolved the doubt in accordance with public policy in favor of a longer period of limitation. The District Court's holding that the claim was not time barred was thus affirmed. Mungas v. Great Falls Clinic, LLP, 2009 MT 426, 354 M 50, 221 P3d 1230 (2009).

35-10-621. Dissociated partner's liability to other persons.

Compiler's Comments

1995 Amendment: Chapter 449 in (2), before "liable", inserted "personally" and after "party" substituted "as the result of a partnership obligation incurred in connection with" for "in"; and inserted (2)(d) concerning obligation partner would be personally liable for.

35-10-622. Statement of dissociation — filing.

Compiler's Comments

2005 Amendment: Chapter 71 inserted (2) requiring filing of any statement of dissociation with specified entity; and made minor changes in style. Amendment effective October 1, 2005.

35-10-624. Events causing dissolution and winding up of partnership business.

Case Notes

Missing Opportunities to Timely Appeal Legal Decisions Establishes Law of Case: After multiple litigation proceedings between two former spouses, the District Court found that the husband had not satisfied a New Jersey judgment against him by the wife. The court issued a writ of execution, a charging order, and an order for the appointment of a receiver, foreclosure of the lien, and the sale of a limited liability corporation to satisfy the debts. On a third appeal to the Montana Supreme Court, the husband appealed the charging order and the appointment of a receiver. The Supreme Court held that because the husband had previous opportunities to raise these issues, the law of the case concerning them had already been rendered, and he was bound by the finality of the previous rulings. Jonas v. Jonas, 2013 MT 202, 371 Mont. 113, 308 P.3d 33.

Proper Calculation of Fractional Partnership Interest — Attorney Fees Based on Fractional Interest Affirmed: Six brothers had equal interests in a farming operation. Four of the brothers sought to buy out the interests of the other two. One brother, Marvin, refused to sell, but the other, Larry, agreed, so Larry's interest was divided between the four participating brothers, giving each an additional 4% ownership interest. The four then mortgaged the partnership's interest without Marvin's consent. In winding up the partnership, the District Court found that Marvin still had a one-sixth interest and that because he was aware of Larry's buyout but declined to participate, Marvin was not entitled to any portion of the buyout. Marvin appealed on grounds that the District Court miscalculated his fractional interest because mortgaging the partnership interest without his consent was a breach of duty and the partnership agreement, but the Supreme Court affirmed. Marvin could not demonstrate that he was damaged by the breach of duty and the partnership agreement. Marvin's interest was not mortgaged, nor did Marvin become obligated to Larry through the buyout. Thus, the District Court properly calculated Marvin's fractional partnership interest. Further, because Marvin retained a one-sixth interest, the District Court correctly charged Marvin with one-sixth of the attorney fees incurred in the dissolution. Pankratz Farms, Inc. v. Pankratz, 2004 MT 180, 322 M 133, 95 P3d 671 (2004).

Liquidation of Partnership Assets Required Under Court-Ordered Partnership Dissolution — Full Accounting Required: The partnership agreement between partners in a family farm and ranch operation did not apply to a court-ordered dissolution pursuant to this section, so default statutory rules applied. To avoid breakup of the family farm, the District Court ordered that one partner buy out the other partner's share. However, in a court-ordered dissolution, 35-10-629 requires liquidation of the partnership assets with any surplus remaining after creditors are paid to be paid in cash to the partners in accordance with their right to distribution. Thus, the District Court committed reversible error in adopting a judicially created alternative to the statutory winding-up procedure. Further, because asset liquidation was required, the District Court was required to perform a detailed accounting of the partnership affairs. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004), followed in Pankratz Farms, Inc. v. Pankratz, 2004 MT 180, 322 M 133, 95 P3d 671 (2004). On remand, following a complete partnership accounting, the District Court held that each party owned a 50% interest in the partnership but that one partner had not paid the partnership for the entire 50% interest. The court ordered that partner to pay for the unpaid 25% interest by establishing a deficit capital account. The partner appealed on grounds that the 2004 McCormick decision (McCormick II) established as the law of the case that the partner owned a 50% interest and that the entire interest was paid. The law of the 2004 case did establish the 50% interests, but the complete accounting showed that the partner still owed a 25% interest that was to be deducted from that partner's share of the proceeds of the sale of the partnership, and the District Court did not err in so holding. In addition, it was the partner's complaint about the inadequacy of the initial accounting that caused the remand in McCormick II, and the partner benefited by the new and complete accounting, so it was not error to charge the partner one-half of the special master's fee. McCormick v. Brevig, 2007 MT 195, 338 M 370, 169 P3d 352 (2007). While the appeal in this case (2007 MT 195, McCormick III) was pending, sale of the partnership took place. Both partners subsequently appealed orders of the District Court concerning how the sale was to be conducted. However, because of the results of the sale, the issues related to the conduct of the sale were decided between the parties, so the appeal was moot. McCormick v. Brevig, 2007 MT 196, 338 M 387, 165 P3d 1124 (2007), following Walker v. St., 2003 MT 134, 316 M 103, 68 P3d 872 (2003).

35-10-627. Statement of dissolution.

Compiler's Comments

2005 Amendment: Chapter 71 inserted (2) requiring filing of any statement of dissociation with specified entity; and made minor changes in style. Amendment effective October 1, 2005.

35-10-628. Partner's liability to other partners after dissolution.

Compiler's Comments

1995 Amendment: Chapter 449 at end of (1) inserted "for which the partner is personally liable under 35-10-307 or 35-10-621".

35-10-629. Settlement of accounts among partners.

Compiler's Comments

1995 Amendment: Chapter 449 at end of (2) inserted "but only to the extent that the negative balance is attributable to debts, obligations, or liabilities for which the partner is personally liable under 35-10-307"; in (3), near end of first sentence after "losses", inserted "and to the extent the partner is personally liable under 35-10-307", in second sentence, near beginning after "fails", inserted "or is not obligated", and at end of third sentence inserted "but only to the extent the contributions are made because of obligations for which the other partners are personally liable under 35-10-307"; and at end of (4) and (5) inserted "under subsections (2) and (3)".

Case Notes

Equalization of Capital Account Prior to Termination of Partnership — Interest Due: The District Court did not err in ordering one partner, Otto, to deposit $821,008 into a capital account in order to equalize the other partner's capital account balance to allow for an equal payment of partnership debts and expenses in preparation for terminating the partnership. Further, as a result of Otto's withdrawal of more than $800,000 from the capital account, the partnership incurred an interest expense of $210,143 on operating loans. Because Otto mismanaged the partnership finances, resulting in the partnership incurring interest costs to pay for business expenses and for Otto's compensation, the District Court correctly ordered Otto to repay the interest expenses. Baltrusch v. Baltrusch, 2008 MT 245, 344 M 489, 190 P3d 1034 (2008).

Acceptance of Special Master's Report in Partnership Dissolution Case Not Error: The District Court appointed an accountant as a special master to examine and report on a complicated partnership dissolution. One of the partners complained that the District Court erred in adopting the findings of a special master because the special master did not comply with former Rule 53, M.R.Civ.P. (now superseded), failing to hold proceedings on the record and preparing findings of fact and conclusions of law. The Supreme Court disagreed. The special master complied with the directive of the District Court by holding hearings with the parties, receiving evidence, and issuing a report, and although the findings and conclusions were not in a typical legal format, they were not clearly erroneous, and the District Court was required to accept the special master's report. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004).

Liquidation of Partnership Assets Required Under Court-Ordered Partnership Dissolution — Full Accounting Required: The partnership agreement between partners in a family farm and ranch operation did not apply to a court-ordered dissolution pursuant to 35-10-624, so default statutory rules applied. To avoid breakup of the family farm, the District Court ordered that one partner buy out the other partner's share. However, in a court-ordered dissolution, this section requires liquidation of the partnership assets with any surplus remaining after creditors are paid to be paid in cash to the partners in accordance with their right to distribution. Thus, the District Court committed reversible error in adopting a judicially created alternative to the statutory winding-up procedure. Further, because asset liquidation was required, the District Court was required to perform a detailed accounting of the partnership affairs. McCormick v. Brevig, 2004 MT 179, 322 M 112, 96 P3d 697 (2004), followed in Pankratz Farms, Inc. v. Pankratz, 2004 MT 180, 322 M 133, 95 P3d 671 (2004). On remand, following a complete partnership accounting, the District Court held that each party owned a 50% interest in the partnership but that one partner had not paid the partnership for the entire 50% interest. The court ordered that partner to pay for the unpaid 25% interest by establishing a deficit capital account. The partner appealed on grounds that the 2004 McCormick decision (McCormick II) established as the law of the case that the partner owned a 50% interest and that the entire interest was paid. The law of the 2004 case did establish the 50% interests, but the complete accounting showed that the partner still owed a 25% interest that was to be deducted from that partner's share of the proceeds of the sale of the partnership, and the District Court did not err in so holding. In addition, it was the partner's complaint about the inadequacy of the initial accounting that caused the remand in McCormick

II, and the partner benefited by the new and complete accounting, so it was not error to charge the partner one-half of the special master's fee. McCormick v. Brevig, 2007 MT 195, 338 M 370, 169 P3d 352 (2007). While the appeal in this case (2007 MT 195, McCormick III) was pending, sale of the partnership took place. Both partners subsequently appealed orders of the District Court concerning how the sale was to be conducted. However, because of the results of the sale, the issues related to the conduct of the sale were decided between the parties, so the appeal was moot. McCormick v. Brevig, 2007 MT 196, 338 M 387, 165 P3d 1124 (2007), following Walker v. St., 2003 MT 134, 316 M 103, 68 P3d 872 (2003).

No Breach of Partnership Duty of Loyalty and Care When Partnership Property Accounted For: One partner transferred a partnership-owned tractor to a corporation owned by his sons, allowed the sons limited use of other partnership property without charging rent, and used personal credit cards for items for which the partnership paid. The other partner contended that this constituted conversion of partnership property and a breach of the duty of loyalty and duty of care to the partnership. The District Court found no conversion or breach of duty, and the Supreme Court affirmed. Under 35-10-405, a partner has a duty to account for partnership property or benefits received from the use or appropriation of the property, and here a proper accounting was made. The tractor was paid for, the use of other partnership property was minimal, and personal credit card expenses were accounted for separately from partnership charges. Baltrusch v. Baltrusch, 2003 MT 357, 319 M 23, 83 P3d 256 (2003).

Allocation of Losses in Other Than Equal Proportion Than Division of Profits: One of two equal partners claimed all of the partnership's losses on his personal taxes for the purpose of receiving a tax benefit. When the time came for final settlement, it was contended that half the losses suffered by the partnership should be assigned to the estate and that because the losses for which the estate was allegedly responsible were greater than the assets to which the estate was entitled, nothing was owed to the estate from the partnership. The District Court held that because one partner benefited from the partnership losses, he must also bear the burden of the action and was effectively precluded from trying to assign a share of the losses to the estate. Citing section 704(b) of the Internal Revenue Code, the Supreme Court agreed, holding that when partners exercise their right to allot partnership losses in some fashion other than in equal proportion to their division of profits, that allotment controls for purposes of determining losses during settlement. The District Court did not err in refusing to allocate partnership losses to the estate, which would have diminished the value of the estate's interest in the partnership. In re Estate of Bolinger, 1998 MT 303, 292 M 97, 971 P2d 767, 55 St. Rep. 1251 (1998).

35-10-635. Conversion of partnership to limited partnership.

Compiler's Comments

1995 Amendment: Chapter 449 in (5), at end of first sentence, inserted "for which the partner is personally liable under 35-10-307 and 35-10-629" and at end of second sentence inserted "but only to the extent that the limited partner would have been personally liable for the partnership under 35-10-307 or 35-10-629 immediately prior to the conversion".

35-10-636. Conversion of limited partnership to partnership.

Compiler's Comments

1995 Amendment: Chapter 449 in (5), in second sentence after "partnership", inserted "for which the partner is personally liable under 35-10-307 or 35-10-629 and which arises or is".

35-10-641. Merger of partnerships.

Compiler's Comments

2015 Amendment: Chapter 280 in (3)(b) after "state" inserted "tribe". Amendment effective April 23, 2015.

Part 7

Registration of Limited Liability Partnerships

35-10-701. Registration of limited liability partnerships.

Compiler's Comments

2015 Amendment: Chapter 166 deleted former (2)(b) that read: "(b) the date of first use, in commerce, of the proposed limited liability partnership"; and made minor changes in style. Amendment effective April 1, 2015.

2011 Amendment: Chapter 26 in (1) after "registration" deleted "of an assumed business name" and deleted former second sentence that read: "The registration of a limited liability partnership under this section is subject to all of the terms and conditions otherwise applicable to the registration of an assumed business name pursuant to Title 30, chapter 13, part 2"; in (2) in introductory clause substituted "registration of a limited liability partnership" for "registration of an assumed business name", substituted "two or more partners" for "one or more partners", at end after "registration" inserted "and must contain the following information:", and inserted (2)(a) through (2)(d) establishing information required to be submitted with application; in (3) after "with" deleted "Title 30, chapter 13, part 2, and"; in (4) after "application for registration" deleted "of an assumed business name" and after "secretary of state" deleted "pursuant to Title 30, chapter 13, part 2"; in (5) substituted "registration of a limited liability partnership under this section or any renewals of that partnership are" for "registration of an assumed business name under this section or any renewals of the assumed business name is"; in (6) substituted "subsections (1) and (2)" for "subsection (1)"; and made minor changes in style. Amendment effective October 1, 2011.

35-10-702. Effect of registration — entity unchanged.

Case Notes

Venue Rules for Limited Liability Partnerships: Venue rules for a limited liability partnership are the same as for a general partnership. A partnership resides where any partner resides for purposes of venue, so a tort action against a limited liability partnership may be filed in any county where any general or limited partner resides. Maupin v. Meadow Park Manor, 2005 MT 304, 329 M 413, 125 P3d 611 (2005).

35-10-703. Name of limited liability partnerships.

Compiler's Comments

2015 Amendment: Chapter 166 in (2) inserted "must be distinguishable on the record and". Amendment effective April 1, 2015.

2001 Amendment: Chapter 27 inserted (2) prohibiting the use of a business name identifier in the name of a limited liability partnership; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 44.5.131 Distinguishable on/in the record(s).

35-10-715. Term and renewal of limited liability partnership registration.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-716. Application for renewal of limited liability partnership registration.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-717. Amendment to registration of limited liability partnership.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-718. Filing amendment to registration of limited liability partnership — issuance of certificate.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-719. Reservation of proposed limited liability partnership name.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-720. Filing application for reservation of limited liability partnership name — issuance of certificate.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Administrative Rules

ARM 44.5.116 Limited liability partnership fees.

35-10-721. Voluntary cancellation of registration of limited liability partnership.

Compiler's Comments

2017 Amendment: Chapter 23 in (1) after "secretary of state" deleted "an executed and verified original affidavit of" and after "registration of a limited liability partnership" inserted "form"; in (2) near beginning substituted "form" for "affidavit" and after "shall file it and" substituted "deliver" for "mail"; and made minor changes in style. Amendment effective October 1, 2017.

Effective Date: This section is effective October 1, 2011.

35-10-722. Execution constituting affirmation — penalty — warning.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-723. Evidentiary effect of certificates and documents of secretary of state.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-724. Effect of transacting business without certificate.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

CHAPTER 11
PARTNERSHIP — USE OF FICTITIOUS NAME

Part 2
Provisions Relating to County Clerk

Part Administrative Rules

ARM 44.5.119 Assumed business name fees.

35-11-201. Register of names to be kept by county clerk.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted "35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979" for "this chapter".

Partnerships Using Fictitious Names to File Certificate: Section 35-11-101 (now repealed) read: "Every partnership, other than a limited partnership, transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate, stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county."

Section 35-11-102 (now repealed) required the certificate to be signed by the partners and acknowledged. Filing was required in order to maintain "any action upon or on account of any contracts made or transactions had in the partnership name".

Section 35-11-103 (now repealed) required the filing of a new certificate "on every change of the members of a partnership, other than a limited partnership," transacting business in Montana under a fictitious name.

35-11-202. Certified copies of register and proof of publication to be evidence.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Deleted "as herein directed" after "county clerk"; substituted "pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979" for "as herein directed".

Partnerships Using Fictitious Names to File Certificate: Section 35-11-101 (now repealed) read: "Every partnership, other than a limited partnership, transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate, stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county."

Section 35-11-102 (now repealed) required the certificate to be signed by the partners and acknowledged. Filing was required in order to maintain "any action upon or on account of any contracts made or transactions had in the partnership name".

Section 35-11-103 (now repealed) required the filing of a new certificate "on every change of the members of a partnership, other than a limited partnership," transacting business in Montana under a fictitious name.

CHAPTER 12
LIMITED PARTNERSHIPS

Chapter Commissioners' Comments

The Revised Uniform Limited Partnership Act adopted by the National Conference of Commissioners on Uniform State Laws in August, 1976, was intended to modernize the prior uniform law while retaining the special character of limited partnerships as compared with corporations. The draftsman of a limited partnership agreement has a degree of flexibility in defining the relations among the partners that is not available in the corporate form. Moreover, the relationship among partners is consensual, and requires a degree of privity that forces the general partner to seek approval of the partners (sometimes unanimous approval) under circumstances that corporate management would find unthinkable. The limited partnership was not intended to be an alternative in all cases where corporate form is undesirable for tax or other reasons, and the new act was not intended to make it so. The new act clarifies many ambiguities and fills interstices in the prior uniform law by adding more detailed language and mechanics. In addition, some important substantive changes and additions have been made.

[Part 5] provides a list of all of the definitions used in the act, integrates the use of limited partnership names with corporate names and provides for an office and agent for service of process in the state of organization. All of these provisions are new. [Part 6] collects in one place all provisions dealing with execution and filing of certificates of limited partnership and certificates of amendment and cancellation. [Parts 5 and 6] reflect an important change in the statutory scheme: recognition that the basic document in any partnership, including a limited partnership, is the partnership agreement. The certificate of limited partnership is not a constitutive document (except in the sense that it is a statutory prerequisite to creation of the limited partnership), and merely reflects matters as to which creditors should be put on notice.

[Part 7] deals with the single most difficult issue facing lawyers who use the limited partnership form of organization: the powers and potential liabilities of limited partners. Section [35-12-703] lists a number of activities in which a limited partner may engage without being held to have so participated in the control of the business that he assumes the liability of a general partner. Moreover, it goes on to confine the liability of a limited partner who merely steps over the line of participation in control to persons who actually know of that participation in control. General liability for partnership debts is imposed only on those limited partners who are, in effect, "silent general partners". With that exception, the provisions of the new act that impose liability on a limited partner who has somehow permitted third parties to be misled to their detriment as to the limited partner's true status confine that liability to those who have actually been misled. The provisions relating to general partners are collected in [part 8].

[Part 9], the finance section, makes some important changes from the prior uniform law. The contribution of services and promises to contribute cash, property or services are now explicitly permitted as contributions. And those who fail to perform promised services are required, in the absence of an agreement to the contrary, to pay the value of the services stated in the certificate of limited partnership.

A number of changes from the prior uniform law are made in [part 10], dealing with distributions from and the withdrawal of partners from the partnership. For example, [35-12-1008, now repealed] creates a statute of limitations on the right of a limited partnership to recover all or part of a contribution that has been returned to a limited partner, whether to satisfy creditors or otherwise.

The assignability of partnership interests is dealt with in considerable detail in [part 11]. The provisions relating to dissolution appear in [part 12], which, among other things, imposes a new standard for seeking judicial dissolution of a limited partnership.

One of the thorniest questions for those who operate limited partnerships in more than one state has been the status of the partnership in a state other than the state of organization. Neither existing case law nor administrative practice makes it clear whether the limited partners continue to possess their limited liability and which law governs the partnership. [Part 13] deals with this problem by providing for registration of foreign limited partnerships and specifying choice-of-law rules.

Finally, [part 14] of the new act authorizes derivative actions to be brought by limited partners.

Chapter Compiler's Comments

Relation to Electronic Signatures in Global and National Commerce Act: Section 95, Ch. 216, L. 2011, provided: "This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act."

Application to Existing Relationships: Section 96, Ch. 216, L. 2011, provided: "(1) Before [the effective date of this act] [October 1, 2011], [this act] governs only:

(a) a limited partnership formed on or after [the effective date of this act]; and

(b) except as otherwise provided in subsections (3) and (4), a limited partnership formed before [the effective date of this act] that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to [this act].

(2) Except as otherwise provided in subsection (3), on and after [the effective date of this act], [this act] governs all limited partnerships.

(3) With respect to a limited partnership formed before [the effective date of this act], the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) Section 35-12-509(3) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before [the effective date of this act].

(b) The limited partnership is not required to amend its certificate of limited partnership to comply with 35-12-601(1)(d).

(c) [Sections 49 and 50] [35-12-1016 and 35-12-1017] do not apply, and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before [the effective date of this act].

(d) [Section 51(4)] [35-12-1018(4)] does not apply.

(e) [Section 51(5)] [35-12-1018(5)] does not apply, and a court has the same power to expel a general partner as the court had immediately before [the effective date of this act].

(f) Section 35-12-1201(3) does not apply, and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before [the effective date of this act].

(4) With respect to a limited partnership that elects pursuant to subsection (1)(b) to be subject to [this act], after the election takes effect, the provisions of [this act] relating to the liability of the limited partnership's general partners to third parties apply:

(a) before [the effective date of this act], to:

(i) a third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(b) on and after [the effective date of this act], to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under subsection (4)(a)(ii)."

Source: Parts 5 through 14 are drawn from the Revised Uniform Limited Partnership Act adopted in 1976 by the National Conference of Commissioners on Uniform State Laws.

Severability: Section 99, Ch. 216, L. 2011, was a severability clause.

Saving Clause: Section 100, Ch. 216, L. 2011, was a saving clause.

Saving Clause: Section 63, Ch. 522, L. 1981, provided: "(1) This act does not impair the obligation of any contract existing on October 1, 1981, or affect any rights accrued, duties incurred, or proceedings begun before October 1, 1981.

(2) A limited partnership formed under any statute of this state before October 1, 1981, may elect to be governed by this chapter. The general partner or partners may make the election for

the limited partnership at any time on or after October 1, 1981, by complying with 35-12-601 of this chapter, except that the limited partners shall not be required to execute a new certificate of limited partnership. Notwithstanding such election by the general partner or partners:

(a) 35-12-901, 35-12-902, and 35-12-1008 apply only to contributions and distributions made after the date of the election;

(b) 35-12-1104 applies only to assignments made after the date of the election; and

(c) 35-12-1204 does not change the priority of creditors for transactions entered into before the date of the election.

(3) A limited partnership formed under any statute of this state before October 1, 1981, until or unless it elects to be governed by this chapter, shall be governed by 35-12-101 through 35-12-403, or other applicable prior law."

Uniform State Law: The "Revised Uniform Limited Partnership Act" replaces the former "Uniform Limited Partnership Act" (former parts 1 through 4 of Title 35, chapter 12). The official comments of the National Conference of Commissioners on Uniform State Laws have been included in the Montana Code Annotations, with parallel Montana code citations appearing in brackets.

Part 5
General Provisions

35-12-502. Construction and application.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "This chapter must be so construed and applied to effect its general purpose to make uniform the law with respect to limited partnerships among states enacting it." Amendment effective October 1, 2011.

35-12-504. Definitions.

Commissioners' Comments

The definitions in this section clarify a number of uncertainties in [former] law and make certain changes.

Contribution: this definition makes it clear that a present contribution of services and a promise to make a future payment of cash, contribution of property or performance of services are permissible forms for a contribution. Accordingly, the present services or promise must be accorded a value in the certificate of limited partnership [35-12-601], and, in the case of a promise, that value may determine the liability of a partner who fails to honor his agreement [35-12-902]. Section 3 of the prior uniform law [35-12-103, now repealed] did not permit a limited partner's contribution to be in the form of services, although that inhibition did not apply to general partners.

Foreign limited partnership: the act only deals with foreign limited partnerships formed under the laws of another "State" of the United States [see 35-12-504(12)], and any adopting State that desires to deal by statute with the status of entities formed under the laws of foreign countries must make appropriate changes throughout the act. The exclusion of such entities from the act was not intended to suggest that their "limited partners" should not be accorded limited liability by the courts of a State adopting the act. That question would be resolved by the choice-of-law rules of the forum State.

General partner: this definition recognizes the separate functions of the partnership agreement and the certificate of limited partnership. The partnership agreement establishes the basic grant of management power to the persons named as general partners; but because of the passive role played by the limited partners, the separate, formal step of embodying that grant of power in the certificate of limited partnership has been preserved to emphasize its importance.

Limited partner: as in the case of general partners, this definition provides for admission of limited partners through the partnership agreement and solemnization in the certificate of limited partnership. In addition, the definition makes it clear that being named in the certificate of limited partnership is a prerequisite to limited partner status. Failure to file does not, however, mean that the participant is a general partner or that he has general liability. See [35-12-602(5) and 35-12-703].

Partnership agreement: the prior uniform law did not refer to the partnership agreement, assuming that all important matters affecting limited partners would be set forth in the certificate of limited partnership. Under modern practice, however, it has been common for the partners to enter into a comprehensive partnership agreement, only part of which was required to be included in the certificate of limited partnership. As reflected in [35-12-601], the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital, and other important issues are left to the partnership agreement.

Partnership interest: this definition is new and is intended to define what it is that is transferred when a partnership interest is assigned.

Compiler's Comments

2015 Amendment: Chapter 280 in definition of foreign limited partnership in first sentence inserted "including the laws of a federally recognized Indian tribe". Amendment effective April 23, 2015.

2011 Amendment: Chapter 216 substituted current definitions for former definitions (see 2011 Session Law for former text). Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1997 Amendment: Chapter 268 in definition of certificate of limited partnership, after "amended", inserted "or restated"; and in definition of limited partner, after "agreement", deleted "and who is named in the certificate of limited partnership as a limited partner".

35-12-505. Name.

Commissioners' Comments

[Subsection] (2) of [this section] has been carried over from Section 5 of the prior uniform law [35-12-205, now repealed] with certain editorial changes. The remainder of [this section] is new and primarily reflects the intention to integrate the registration of limited partnership names with that of corporate names. Accordingly, [35-12-601] provides for central, state-wide filing of certificates of limited partnership, and [subsections] (3), (4) and (5) of [this section] contain standards to be applied by the filing officer in determining whether the certificate should be filed. [Subsection] (1) requires that the proper name of a limited partnership contain the words "limited partnership" in full.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "(1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) must contain the words "limited partnership", the abbreviation "l.p.", or the designation "lp";

(b) may not contain the name of a limited partner unless:

(i) it is also the name of a general partner; or

(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited partnership is other than a limited partnership; and

(d) must be distinguishable on the record from the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

(2) The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308." Amendment effective October 1, 2011.

2001 Amendment: Chapter 27 inserted (1)(c) prohibiting the use of a business name identifier in the name of a limited partnership; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 229 inserted (2) providing that use of limited partnership's name is governed by 35-1-308; and made minor changes in style. Amendment effective April 2, 1999.

1997 Amendment: Chapter 268 in (1) substituted "the abbreviation "l.p.", or the designation "lp"" for "in full"; deleted former (3) that read: "may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership"; at beginning of (4) substituted "must be distinguishable on the record from" for "may not be the same as or deceptively similar to"; and made minor changes in style.

1993 Amendment: Chapter 120 in (4) inserted reference to limited liability company.

Administrative Rules

ARM 44.5.131 Distinguishable on/in the record(s).

35-12-506. Reservation of name.

Commissioners' Comments

[This section] is new. The prior uniform law did not provide for registration of names.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language pertaining to reservation of names for former text (see 2011 Session Law for former text). Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-12-508. Required information.

Commissioners' Comments

[This section] is new. In view of the passive nature of the limited partner's position, it has been widely felt that limited partners are entitled to access to certain basic documents, including the certificate of limited partnership and any partnership agreement. In view of the great diversity among limited partnerships, it was thought inappropriate to require a standard form of financial report, and [35-12-508] does no more than require retention of tax returns and any other financial statements that are prepared. The names and addresses of the partners are made available to the general public.

Compiler's Comments

2011 Amendment: Chapter 216 in (1) substituted "street and mailing address" for "business address"; in (2) substituted current language for former language that read "a copy of the certificate of limited partnership and all certificates of amendment, together with executed copies of any powers of attorney pursuant to which any certificate has been executed"; inserted (3) referring to articles of conversion or merger; deleted former (1)(d) that read: "(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years"; inserted (5) pertaining to copy of partnership agreement; inserted (6) pertaining to copy of financial statement; inserted (7) pertaining to copy of consent or vote of a partner; in (8) substituted "partnership agreement made in a record, a record stating" for "written partnership agreement, a writing setting out"; in (8)(a) substituted "other benefits contributed" for "other property or services contributed"; in (8)(c) substituted current language for former language that read "any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution"; in (8)(d) substituted "activities" for "affairs"; deleted former (2) that read: "(2) Records kept under this section must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours"; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 240 in (1) substituted "principal office" for "office referred to in 35-12-507(1)". Amendment effective October 1, 2008.

1997 Amendment: Chapter 268 in (1)(a), after "partner", substituted "separately identifying the general partners" for "set forth" and at end inserted "and the limited partners, in alphabetical order"; inserted (1)(e) regarding a record of the contributions of the partners and events triggering dissolution; and made minor changes in style.

35-12-509. Nature, purpose, and duration of entity.

Commissioners' Comments

[This section] is identical to Section 3 of the prior uniform law [35-12-103, now repealed]. Many states require that certain regulated industries, such as banking, may be carried on only by entities organized pursuant to special statutes, and it is contemplated that the prohibited activities would be confined to the matters covered by those statutes.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "A limited partnership may carry on any business that a partnership without limited partners may carry on." Amendment effective October 1, 2011.

35-12-510. Business transactions of partner with the partnership.

Commissioners' Comments

[This section] makes a number of important changes in Section 13 of the prior uniform law [35-12-310, now repealed]. Section 13, in effect, created a special fraudulent conveyance provision applicable to the making of secured loans by limited partners and the repayment by limited partnerships of loans from limited partners. [Section 35-12-510] leaves that question to a State's general fraudulent conveyance statute. In addition, [this section] eliminates the prohibition in former Section 13 against a general partner (as opposed to a limited partner) sharing pro rata with general creditors in the case of an unsecured loan. Of course, other doctrines developed under bankruptcy and insolvency laws may require the subordination of loans by partners under appropriate circumstances.

Compiler's Comments

2011 Amendment: Chapter 216 at beginning deleted "Except as otherwise provided in the partnership agreement" and after "partnership and" deleted "subject to other applicable provisions of law"; and made minor changes in style. Amendment effective October 1, 2011.

Noncodified Section — Redundancy: Section 13, Ch. 216, L. 2011, was not codified because its text was identical to the text of this section.

35-12-511. Knowledge and notice.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-512. Powers.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-513. Governing law.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-514. Supplemental principles of law — rate of interest.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-515. Effect of partnership agreement — nonwaivable provisions.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Case Notes

Illinois Partnership Agreement Ruled a Controlling Document Under Montana Law — Shares Pass as if Decedent Died Intestate: The decedent was a member of a family limited partnership agreement formed under Illinois law. The decedent, a Montana resident, devised 65% of the residual estate to her nieces and nephews. However, the decedent's will did not mention the interest in the limited partnership. Siblings to the decedent petitioned the District Court to determine whether the interest was included in the residual estate. The District Court held that the partnership agreement was a governing instrument under 72-2-721 and that the interest was a nonprobate asset and not part of the residual estate. The Supreme Court affirmed, holding that 72-2-721 applied instead of Illinois law and that the partnership interest must pass to the heirs in the manner it would had she died intestate. Estate of Kelly, 2014 MT 254, 376 Mont. 361, 334 P.3d 911.

35-12-516. Consent and proxies of partners.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-521. Secretary of state to establish fees.

Compiler's Comments

2001 Amendment: Chapter 396 in first sentence after "fees" deleted "reasonably related to the costs" and substituted last sentence requiring that fees must be set and deposited in accordance with 2-15-405 for "The secretary of state shall maintain records sufficient to support the fee charged for the filing requirements"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 268 near beginning of first sentence, after "state", substituted "shall" for "is authorized and required to" and after "certificate of amendment" inserted "or restatement".

Statement of Intent: The statement of intent attached to SB 161 (Ch. 522, L. 1981) provided: "A statement of intent is required for this bill because section 65 of the bill [35-12-521] would grant the secretary of state the authority to adopt rules establishing filing fees. Rules are to be adopted under the Montana Administrative Procedure Act. The documents for which filing fees may be charged under those rules shall not be limited to the documents specifically named in section 65 of SB 161 [35-12-521], but may include others required or allowed to be filed under the bill's provisions, as well as any amended documents required or allowed to be filed. The rules shall allow the filing and billing for filing fees to be accomplished by mail."

Administrative Rules

ARM 44.5.117 Limited partnership fees.

35-12-522. Action by attorney general.

Compiler's Comments

2011 Amendment: Chapter 216 substituted "this chapter" for "35-12-1301 through 35-12-1307". Amendment effective October 1, 2011.

1987 Amendment: At end of section changed "35-12-1308" to "35-12-1307".

Part 6
Formation — Certificate of Limited Partnership

35-12-601. Formation of limited partnership — certificate of limited partnership.

Commissioners' Comments

The matters required to be set forth in the certificate of limited partnership are not different in kind from those required by Section 2 of the prior uniform law [35-12-201, now repealed], although certain additions and deletions have been made and the description has been revised to conform with the rest of the act. In general, the certificate is intended to serve two functions: first, to place creditors on notice of the facts concerning the capital of the partnership and the rules regarding additional contributions to and withdrawals from the partnership; second, to clearly delineate the time at which persons become general partners and limited partners. [Subsection (2)], which is based upon the prior uniform law, has been retained to make it clear that the existence of the limited partnership depends only upon compliance with this section. Its continued existence is not dependent upon compliance with other provisions of this act.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 26 in (1)(c) substituted "business mailing address" for "complete business street address". Amendment effective October 1, 2011.

Chapter 216 substituted current language for former language that read: "(1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

(a) the name of the limited partnership;

(b) the information required by 35-7-105(1);

(c) the name and the complete business street address of each general partner; and

(d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section." Amendment effective October 1, 2011.

2007 Amendment: Chapter 240 substituted (1)(b) concerning information required by 35-7-105(1) for former text that read: "the complete street address of the office and the name and complete street address of the agent for service of process required to be maintained by 35-12-507"; and made minor changes in style. Amendment effective October 1, 2008.

2003 Amendment: Chapter 75 in (1)(b) in two places substituted "complete street address" for "address"; and in (1)(c) substituted "complete business street address" for "business address". Amendment effective October 1, 2003.

1997 Amendment: Chapter 268 in (1), at beginning, substituted "In order" for "Two or more persons desiring"; deleted former (1)(b) that read: "the general character of its business"; in (1)(c), after "each", inserted "general" and after "partner" deleted "(specifying the general partners and limited partners separately)"; deleted (1)(e) through (1)(l) that read: "(e) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;

(f) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(g) any power of a limited partner to grant an assignee of any part of his partnership interest the right to become a limited partner and the terms and conditions of the power;

(h) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of or the method of determining the distribution to which he may be entitled respecting his partnership interest and the terms and conditions of the termination and distribution;

(i) any right of a partner to receive distributions of property, including cash, from the limited partnership;

(j) any right of a partner to receive or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution;

(k) any time at which or events on the happening of which the limited partnership is to be dissolved and its affairs wound up;

(l) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner"; in (1)(d), before "partners", inserted "general"; and made minor changes in style.

35-12-602. Amendments or restatement of certificate.

Commissioners' Comments

[This section] makes substantial changes in Section 24 of the prior uniform law [35-12-203, now repealed]. [Subsection (2)] lists the basic events—the addition or withdrawal of partners or capital or capital obligations—that are so central to the function of the certificate of limited partnership that they require prompt amendment. [Subsection (3)] makes it clear, as it was not clear under subdivision (2)(g) of former Section 24, that the certificate of limited partnership is intended to be an accurate description of the facts to which it relates at all times and does not speak merely as of the date it is executed. [Subsection (5)] provides a "safe harbor" against claims of creditors or others who assert that they have been misled by the failure to amend the certificate of limited partnership to reflect changes in any of the important facts referred to in [subsection (2)]; if the certificate of limited partnership is amended within 30 days of the occurrence of the event, no creditor or other person can recover for damages sustained during the interim. Additional protection is afforded by the provisions of [35-12-704].

Compiler's Comments

2011 Amendment: Chapter 216 in (1) in introductory clause substituted current language for former language that read "A certificate of limited partnership is amended by filing a certificate of amendment in the office of the secretary of state. The certificate must set forth"; in (1)(b) inserted "initial"; in (1)(c) substituted "changes the amendment makes to the certificate as most recently amended or restated" for "amendments to the certificate"; in (2) in introductory clause substituted current language for former language that read "An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events"; in (2)(b) substituted "dissociation of a person as" for "withdrawal of"; in (2)(c) substituted current language for former language that read "the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner"; deleted former (3) that read: "(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement in the certificate was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect"; inserted (3) pertaining to general partner responsibilities regarding false information; in (4) substituted "purpose as determined by the limited partnership" for "purpose the general partners may determine"; deleted former (5) that read: "(5) A person is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) if the amendment is filed within the 30-day period specified in subsection (2)"; in (5) substituted "be delivered to the secretary of state for filing" for "be executed and filed" and at end substituted "an amendment" for "a certificate of amendment"; inserted (6) pertaining to effective date of filed amendment or certificate; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 deleted former (2)(a) that read: "a change in the amount or character of the contribution of any partner or in any partner's obligation to make a contribution"; in (2)(a), after "new", inserted "general"; in (2)(b), before "partner", inserted "general"; in (3), at end after "respect", deleted "but amendments to show changes of addresses of limited partners need be filed only once every 12 months"; inserted (6) allowing execution of a restated certificate in the same manner as a certificate of amendment; and made minor changes in style.

35-12-603. Statement of cancellation.

Commissioners' Comments

[This section] changes Section 24 of the prior uniform law [35-12-203, now repealed] by making it clear that the certificate of cancellation should be filed upon the commencement of winding up of the limited partnership. Section 24 provided for cancellation "when the partnership is dissolved".

Compiler's Comments

2011 Amendment: Chapter 216 in (1) substituted current language for former language that read "A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth"; deleted former (4) that read: "(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate"; in (1)(d) substituted current language for former language that read "any other information the general partners filing the certificate may determine"; inserted (2) pertaining to effective date of cancellation; and made minor changes in style. Amendment effective October 1, 2011.

35-12-604. Signing of records.

Commissioners' Comments

[This section] collects in one place the formal requirements for the execution of certificates which were set forth in Sections 2 and 25 of the prior uniform law [35-12-201 and 35-12-204, now repealed]. Those sections required that each certificate be signed by all partners, and there developed an unnecessarily cumbersome practice of having each limited partner sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. [This section] insures that each partner must sign a certificate when he becomes a partner or when the certificates reflect any increase in his obligation to make contributions. Certificates of amendment are required to be signed by only one general partner and all general partners must sign certificates of cancellation. [This section] prohibits blanket powers of attorney for the execution of certificates in many cases, since those conditions under which a partner is required to sign have been narrowed to circumstances of special importance to that partner. The former requirement that all certificates be sworn has been confined to statements by the general partners, recognizing that the limited partner's role is a limited one.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "(1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of the secretary of state must be executed in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners.

(b) Each certificate of amendment must be signed by at least one general partner and by each other general partner who is designated in the certificate as a new general partner.

(c) Each certificate of cancellation must be signed by all general partners.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated in the certificate are true." Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 in (1)(a), at beginning, substituted "An initial" for "Each original" and at end substituted "all general partners" for "each partner named therein"; in (1)(b), after "other" and after "new", inserted "general" and at end deleted "or whose contribution is described as having been increased"; in (2), after "admission", substituted "of a general partner" for "or increased contribution of a partner" and at end deleted "or increase"; and made minor changes in style.

35-12-605. Signing and filing pursuant to judicial order.

Commissioners' Comments

[This section] changes subdivisions (3) and (4) of Section 25 of the prior uniform law [35-12-204, now repealed] by confining the persons who have standing to seek judicial intervention to partners and to those assignees who are adversely affected by the failure or refusal of the appropriate persons to file a certificate of amendment or cancellation.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read "If the persons required by 35-12-604 to execute any certificate fail or refuse to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate." Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 in first sentence, after "certificate", deleted "of amendment or cancellation", after "other" substituted "person" for "partner and any assignee of a partnership interest", and at end substituted "execution of the certificate" for "amendment or cancellation" and in second sentence, after "finds that", substituted "it is proper for the certificate to be executed" for "the amendment or cancellation is proper" and at end deleted "of amendment or cancellation".

35-12-607. Liability for false statement in certificate.

Commissioners' Comments

[This section] changes Section 6 of the prior uniform law [35-12-202, now repealed] by providing explicitly for the liability of persons who sign a certificate as agent under a power of attorney and by confining the obligation to amend a certificate of limited partnership in light of future events to general partners.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "If any certificate of limited partnership or certificate of amendment, restatement, or cancellation contains a false statement, any person who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on the person's behalf who knew and any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) any general partner who after the execution of the certificate knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel, restate, or amend the certificate or to file a petition for its cancellation, restatement, or amendment under 35-12-605." Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 in introductory clause, after "amendment", inserted "restatement"; in (2), near end after "cancel", inserted "restate" and after "cancellation" inserted "restatement"; and made minor changes in style.

35-12-610. Term and renewal of certification.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 26 in (1) in first sentence near beginning before "limited partnership" inserted "domestic or foreign" and after "certification" inserted "or the date of issuance of a certificate under 35-12-1303"; and made minor changes in style. Amendment effective October 1, 2011. The amendment by Ch. 216 rendered the amendment by Ch. 26 void.

Chapter 216 in (1) in first sentence inserted "limited partnership or a certificate of authority of a foreign" and inserted "or the date of issuance of a certificate"; inserted (5) pertaining to expiration of certificate of authority; and made minor changes in style. Amendment effective October 1, 2011.

35-12-611. Application for renewal of certification.

Compiler's Comments

2003 Amendment: Chapter 75 at beginning deleted "One original and one copy of"; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 268 in second sentence, after "limited to the", substituted "information required by 35-12-601" for "following information:

(1) the complete name of the limited partnership;

(2) the name and address, including street name and number, if any, of each general partner;

(3) the address of the principal office of the limited partnership, including the street name and number;

(4) a description of the business;

(5) the name of the county or counties in which business is being transacted; and

(6) the name and address of the specified agent for service of process in the state."

35-12-612. Filing of application for renewal of certification — issuance of certificate.

Compiler's Comments

2003 Amendment: Chapter 75 in (1)(a) substituted "the application" for "the original and on the copy"; at end of (1)(b) deleted "in his office"; at end of (1)(c) substituted "certification letter" for "certificate of renewal, to which he shall affix the copy"; and at end of (2) substituted "certification letter" for "certificate of renewal, together with an attached copy of the application for renewal of certification of a limited partnership". Amendment effective October 1, 2003.

35-12-614. Delivery to and filing of records by secretary of state — effective time and date.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-615. Filing of facsimile copy.

Compiler's Comments

1997 Amendment: Chapter 290 at end of first sentence in (1) deleted "provided that he receives the original document within 5 working days of the receipt of the facsimile copy"; deleted introductory phrase, (1)(a), (1)(b), (2), and (3) that read: "A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void"; and made minor changes in style. Amendment effective April 18, 1997.

35-12-616. Correcting filed record.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-617. Certificate of fact.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-618. Application for renewal of foreign limited partnership certificate of authority — requirements for appointed registered agent.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-620. Reinstatement following cancellation for failure to renew.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Part 7
Limited Partners

35-12-701. Becoming limited partner.

Commissioners' Comments

[Section 35-12-701(1)(a)] adds to Section 8 of the prior uniform law [35-12-207, now repealed] an explicit recognition of the fact that unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise. [Section 35-12-701(1)(b)] is derived from Section 19 of the prior uniform law [35-12-304, now repealed] but abandons the former terminology of "substituted limited partner".

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "(1) A person becomes a limited partner:

(a) at the time the limited partnership is formed; or

(b) at any later time specified in the partnership agreement for becoming a limited partner.

(2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power." Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 inserted (1) regarding the time at which a person becomes a limited partner; in (2), after "admitted as", substituted "an additional" for "a new"; deleted former (2) that read: "(2) In each case under subsection (1), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact"; and made minor changes in style.

35-12-703. No liability as limited partner for limited partnership obligations.

Commissioners' Comments

[This section] makes several important changes in Section 7 of the prior uniform law [35-12-301, now repealed]. The first sentence of [35-12-703(1)] carries over the basic test from former Section 7—whether the limited partner "takes part in the control of the business"—in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed. The second sentence of [35-12-703(1)] reflects a wholly new concept. Because of the difficulty of determining when the "control" line has been overstepped, it was thought it unfair to impose general partner's liability on a limited partner except to the extent that a third party had knowledge of his participation in control of the business. On the other hand, in order to avoid permitting a limited partner to exercise all of the powers of a general partner while avoiding any direct dealings with third parties, the "is not substantially the same as" test was introduced. [Subsection (2)] is intended to provide a "safe harbor" by enumerating certain activities which a limited partner may carry on for the partnership without being deemed to have taken part in control of the business. [Subsection (4)] is derived from Section 5 of the prior uniform law [35-12-205, now repealed], but adds as a condition to the limited partner's liability the fact that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "(1) Except as provided in subsection (4), a limited partner is not liable for the obligations of a limited partnership unless, in addition to the exercise of the rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) requesting or attending a meeting of partners;

(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificates of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to 35-12-1203; or

(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(4) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by 35-12-505(1)(b)(i) and (1)(b)(ii), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner." Amendment effective October 1, 2011.

2001 Amendment: Chapter 7 in (4) near middle substituted "35-12-505(1)(b)(i) and (1)(b)(ii)" for "35-12-505(2)(a) and (2)(b)". Amendment effective October 1, 2001.

1997 Amendment: Chapter 268 in (1), near middle of second sentence after "the business", deleted "is not substantially the same as the exercise of the powers of a general partner" and at end substituted "reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner" for "with actual knowledge of his participation in control"; in (2)(a), at end, inserted "or being an officer, director, or shareholder of a general partner that is a corporation"; in (2)(c), at end, inserted "or guaranteeing or assuming one or more specific obligations of the limited partnership"; substituted (2)(d) regarding pursuit of a derivative action for former language that read: "approving or disapproving an amendment to the partnership agreement"; inserted (2)(e) regarding meetings of partners; in (2)(f), at beginning, substituted "proposing, approving, or disapproving, by voting or otherwise" for "voting on"; in (2)(f)(ii), at end, deleted "other than in the ordinary course of its business"; in (2)(f)(v), before "removal", inserted "admission or"; inserted (2)(f)(vi) through (2)(f)(ix) adding additional actions related to voting; inserted (2)(g) regarding winding up the limited partnership; inserted (2)(h) regarding unenumerated powers; and made minor changes in style.

35-12-704. Person erroneously believing self to be limited partner.

Commissioners' Comments

[This section] is derived from Section 11 of the prior uniform law [35-12-312, now repealed]. The "good faith" requirement has been added in the first sentence of [35-12-704(1)]. The provisions of [35-12-704(1)(b)] are intended to clarify an ambiguity in the prior law by providing that a person who chooses to withdraw from the enterprise in order to protect himself from liability is not required to renounce any of his then current interest in the enterprise so long as he has no further participation as an equity participant. [Subsection (2)] preserves the liability of the equity participant prior to withdrawal (and after the time for appropriate amendment in the case of a limited partnership) to any third party who has transacted business with the person believing in good faith that he was a general partner.

Compiler's Comments

2011 Amendment: Chapter 216 in (1) in introductory clause near beginning substituted "makes an investment" for "makes a contribution", after "in the enterprise" substituted "is not liable for the" for "is not a general partner in the enterprise and is not bound by its", after "making the" substituted "investment" for "contribution", and after "rights of" inserted "or appropriate to"; in (1)(a) substituted "amendment, or statement of correction to be signed and delivered to the secretary of state for filing" for "amendment to be executed and filed"; in (1)(b) substituted "participation as an owner" for "equity participation", after "executing" substituted "and delivering to" for "and filing in the office of", and after "state" substituted "for filing a statement of" for "a certificate declaring"; in (2) substituted current language for former language that read "Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate, if any, is filed to show that the person is not a general partner, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction"; in (2) and (3) substituted current language for former language that read "Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate, if any, is filed to show that the person is not a general partner, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction"; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 in (2), near middle after "show", substituted "that the person is not a general partner" for "the withdrawal or before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under 35-12-602"; and made minor changes in style.

1985 Amendment: At end of (1)(b) after "enterprise", inserted "by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section".

The amendment of this section of the uniform law was approved by the executive committee of the National Conference of Commissioners on Uniform State Laws to add a more specific notice requirement to facilitate withdrawal from equity participation when a partner believes that he has limited partner status but finds that he has made a good faith mistake.

35-12-705. Right of limited partner and former limited partner to information.

Commissioners' Comments

[This section] changes and restates the rights of limited partners to information about the partnership formerly provided by Section 10 of the prior uniform law [35-10-307, now repealed].

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language regarding right of limited partner and former limited partner to information for former language on right to information that read: "Each limited partner has the right to:

(1) inspect and copy any of the partnership records required by 35-12-508 to be maintained; and

(2) obtain from the general partners from time to time upon reasonable demand:

(a) true and full information regarding the state of the business and financial condition of the limited partnership;

(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) any other information regarding the affairs of the limited partnership as is just and reasonable." Amendment effective October 1, 2011.

35-12-706. No right or power as limited partner to bind limited partnership.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-707. Limited duties of limited partners.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 8
General Partners

35-12-801. Becoming partner.

Commissioners' Comments

[This section] is derived from Section 9(1)(e) of the prior law [35-12-306, now repealed] and carries over the unwaivable requirement that all limited partners must consent to the admission of an additional general partner and that such consent must specifically identify the general partner involved.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on becoming a partner for former language on admission that read: "After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners." Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 near middle substituted "as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners" for "only", before "written" deleted "specific", and after "consent of" substituted "all partners" for "each partner".

35-12-803. General partner's liabilities.

Commissioners' Comments

[This section] is derived from Section 9(1) of the prior uniform law [35-12-306, now repealed].

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on partner liability for former language on general powers and liabilities that read: "(1) Except as otherwise provided in this chapter and in the partnership agreement, a general partner of a limited partnership has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners.

(2) Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners." Amendment effective October 1, 2011.

1985 Amendment: Near end of (1) after "restrictions", deleted "and liabilities"; and inserted (2) relating to the liabilities of a general partner in a limited partnership.

The amendment of this section of the uniform law was approved by the executive committee of the National Conference of Commissioners on Uniform State Laws to clarify the meaning of the section as originally adopted, responding to objections raised by the Internal Revenue Service.

35-12-806. General partner as agent of limited partnership.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-807. Limited partnership liable for general partner's actionable conduct.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-808. Actions by and against partnership and partners.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-809. Management rights of general partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-810. Right of general partner and former general partner to information.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-811. General standards of general partner's conduct.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 9
Finance

35-12-901. Form of contributions.

Commissioners' Comments

As noted in the comment to [35-12-504], the explicit permission to make contributions of services expands Section 4 of the prior uniform law [35-12-206, now repealed].

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on form of contributions for former language that read: "The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services." Amendment effective October 1, 2011.

35-12-902. Liability for contributions.

Commissioners' Comments

Although Section 17(1) of the prior uniform law [35-12-309, now repealed] required a partner to fulfill his promise to make contributions, the addition of contributions in the form of a promise to render services means that a partner who is unable to perform those services because of death or disability as well as because of an intentional default is required to pay the cash value of the services unless the certificate of limited partnership provides otherwise. [Subsection (2)] is derived from Section 17(3) of the prior uniform law.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language in (1) and (2) for former language that read: "(1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(2) Except as otherwise provided in the partnership agreement, a partner is liable to the limited partnership for any enforceable promise to contribute cash or property or to perform services regardless of whether the partner is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to 35-12-508, of the stated contribution that has not been made"; in (3) at beginning of first sentence deleted "Unless otherwise provided in the partnership agreement", in second sentence at beginning deleted "Notwithstanding a compromise so authorized", and after "obligation" substituted "described in subsection (1), without notice of any compromise under this subsection, may enforce the original obligation" for "after the partner signs a writing that, in either case, reflects the obligation and before the amendment or cancellation to reflect the compromise may enforce the precompromise obligation"; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 inserted (1) regarding enforceability of a promise to contribute; in (2), near beginning of first sentence after "provided in the", substituted "partnership agreement" for "certificate of limited partnership" and before "promise" inserted "enforceable" and near end of second sentence, after "stated in the", substituted "partnership records required to be kept pursuant to 35-12-508" for "certificate of limited partnership"; in (3), near middle after "credit or", substituted "otherwise acts in reliance on that obligation after the partner signs a writing that" for "whose claim arises after the filing of the certificate of limited partnership or an amendment thereto which"; and made minor changes in style.

35-12-905. Sharing of distributions.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 10
Distribution and Dissociation

35-12-1001. Interim distributions.

Commissioners' Comments

[This section] is new.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on interim distributions for former language that read: "Except as otherwise provided in 35-12-1001 through 35-12-1008, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up to the extent and at the times or on the happening of the events specified in the partnership agreement." Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 deleted (2) that read: "(2) if any distribution constitutes a return of any part of his contribution under 35-12-1008(3), to the extent and at the time or on the happening of the events specified in the certificate of limited partnership"; and made minor changes in style.

35-12-1005. Distributions in kind.

Commissioners' Comments

The first sentence of [this section] is derived from Section 16(3) of the prior uniform law [35-12-314, now repealed]. The second sentence is new, and is intended to protect a limited partner (and the remaining partners) against a distribution in kind of more than his share of particular assets.

Compiler's Comments

2011 Amendment: Chapter 216 at beginning of first sentence substituted "A partner does not have a right to demand or receive" for "Except as provided in writing in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive" and substituted language in second sentence for former language that read "Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset that is equal to the percentage in which the partner shares in distributions from the limited partnership"; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 near beginning of first sentence, after "provided in", substituted "writing in the partnership agreement" for "the certificate of limited partnership" and near beginning of second sentence, after "provided", inserted "in writing"; and made minor changes in style.

35-12-1006. Right to distributions.

Commissioners' Comments

[This section] is new and is intended to make it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. On the other hand, since partners entitled to distributions have creditor status, there did not seem to be a need for the extraordinary remedy of Section 16(4)(a) of the prior uniform law, which granted a limited partner the right to seek dissolution of the partnership if he was unsuccessful in demanding the return of his contribution. It is more appropriate for the partner to simply sue as an ordinary creditor and obtain a judgment.

Compiler's Comments

2011 Amendment: Chapter 216 in first sentence in two places inserted "or transferee"; inserted second sentence pertaining to distributions being subject to offset; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

35-12-1009. No distribution on account of dissociation.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1010. Limitations on distribution.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1011. Liability for improper distributions.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1016. Dissociation as limited partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1017. Effect of dissociation as limited partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1018. Dissociation as general partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1019. Person's power to dissociate as general partner — wrongful dissociation.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1020. Effect of dissociation as general partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1021. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1022. Liability to other persons of person dissociated as general partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 11

Assignment of Partnership Interests

35-12-1103. Rights of creditors of partner or transferee.

Commissioners' Comments

[This section] is derived from Section 22 of the prior uniform law [35-12-305, now repealed] but has not carried over some provisions that were thought to be superfluous. For example, references in Section 22(1) to specific remedies have been omitted, as has a prohibition in Section 22(2) against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine those matters.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on rights of creditors of partner or transferee for former language on rights of creditors that read: "On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to the partner's partnership interest." Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-12-1105. Power of estate of deceased partner.

Commissioners' Comments

[This section] is derived from Section 21(1) of the prior uniform law [35-12-402, now repealed]. Former Section 21(2), making a deceased limited partner's estate liable for his liabilities as a limited partner was deleted as superfluous, with no intention of changing the liability of the estate.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on power of estate of deceased partner for former language on power of estate of deceased or incompetent partner that read: "If a partner who is a natural person dies or a court of competent jurisdiction adjudges that partner to be incompetent to manage the partner's person or property, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner." Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

35-12-1106. Partner's transferable interest.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1107. Transfer of partner's transferable interest.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 12

Dissolution

35-12-1201. Nonjudicial dissolution.

Commissioners' Comments

[This section] merely collects in one place all of the events causing dissolution. [Subsection] (3) is derived from Sections 9(1)(g) [35-12-306, now repealed] and 20 of the prior uniform law, but adds the 90-day grace period.

Compiler's Comments

2017 Amendment — Code Commissioner Correction: Chapter 23 inserted (2) regarding appointing and maintaining an agent. Amendment effective October 1, 2017.

Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner in (1) in exception clause substituted "35-12-1202" for "35-12-1201" to correct an erroneous reference.

2011 Amendment: Chapter 216 substituted current language on nonjudicial dissolution for former language that read: "A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified in writing in the partnership agreement;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and the remaining general partner does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with 35-12-1202." Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 in (1), at end after "specified", substituted "in writing in the partnership agreement" for "in the certificate of limited partnership"; in (3), near middle before "permits", substituted "written provisions of the partnership agreement" for "certificate of limited partnership"; and made minor changes in style.

35-12-1202. Judicial resolution.

Commissioners' Comments

[This section] is new.

Compiler's Comments

2011 Amendment: Chapter 216 near beginning after "by" deleted "or for", after "may" substituted "order" for "decree a", and after "on the" substituted "activities of the limited partnership" for "business"; and made minor changes in style. Amendment effective October 1, 2011.

35-12-1205. Winding up.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1211. Power of general partner and person dissociated as general partner to bind partnership after dissolution.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1212. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and person dissociated as general partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1213. Known claims against dissolved limited partnership.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1214. Other claims against dissolved limited partnership.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1215. Liability of general partner and person dissociated as general partner when claim against limited partnership barred.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1216. Disposition of assets — when contributions required.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 13

Foreign Limited Partnerships

35-12-1301. Governing law.

Compiler's Comments

2015 Amendment: Chapter 280 in (1) near beginning inserted "including the laws of a federally recognized Indian tribe". Amendment effective April 23, 2015.

2011 Amendment: Chapter 216 substituted current language on governing law for former language that read: "Subject to the constitution and public policy of this state, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state." Amendment effective October 1, 2011.

35-12-1302. Application for certificate of authority.

Commissioners' Comments

[This section] is new. It was thought that requiring a full copy of the certificate of limited partnership and all amendments thereto to be filed in each state in which the partnership does business would impose an unreasonable burden on interstate limited partnerships and that the information on file was sufficient to tell interested persons where they could write to obtain copies of these basic documents.

Compiler's Comments

2015 Amendment: Chapter 42 deleted former (2) that read: "(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import dated within 6 months of its submission signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized"; inserted (7) regarding statement of compliance for foreign limited partnership; and made minor changes in style. Amendment effective February 18, 2015.

2011 Amendments — Composite Section: Chapter 26 in (1)(d) before "address" inserted "business mailing"; in (1)(e) before "address" inserted "mailing"; and in (1)(f) before "address" inserted "business mailing". Amendment effective October 1, 2011. The amendment by Ch. 216 rendered the amendment by Ch. 26 void.

Chapter 216 substituted current language on application for certificate of authority for former language on registration that read: "Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(2) the state in which the foreign limited partnership was formed and the date of the foreign limited partnership's formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint. An agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state.

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(5) the address of the office required to be maintained in the state of the foreign limited partnership's organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn." Amendment effective October 1, 2011.

2005 Amendment: Chapter 71 in (1) after "limited partnership" substituted remainder of (1) regarding name of foreign limited partnership for "and, if different, the name under which it proposes to transact business and register in this state"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 75 in introductory clause near middle after "secretary of state" deleted "one original and one copy of"; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 268 deleted former (3) that read: "the general character of the business it proposes to transact in this state"; deleted former (7) that read: "(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses"; inserted (6) requiring the name and business address of each general partner; inserted (7) regarding the address of the office; adjusted subsection references; and made minor changes in style.

1983 Amendment: In introduction, in middle of second sentence, substituted "one original and one copy of the" for "in duplicate an".

Administrative Rules

ARM 44.5.117 Limited partnership fees.

35-12-1307. Cancellation of certificate of authority — effect of failure to have certificate.

Compiler's Comments

2011 Amendment: Chapter 216 inserted (1) pertaining to canceling a certificate of authority; in (2) after "business in this state" deleted "without registration" and after "has" substituted "a certificate of authority to transact business in this state" for "registered"; in (3) near beginning after "partnership to" substituted reference to certificate for "register"; in (4) after "A" deleted "limited", after "liable" substituted "for the obligations" for "as a general partner", and at end substituted "certificate of authority" for "registration"; in (5) after "without" substituted "a certificate of authority or cancels its certificate of authority" for "registration"; and made minor changes in style. Amendment effective October 1, 2011.

35-12-1309. Activities not constituting transacting business.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1310. Filing of certificate of authority.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1311. Application for renewal of foreign limited partnership certification — requirement for appointed registered agent.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1312. Noncomplying name of foreign limited partnership.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1313. Revocation of certificate of authority.

Compiler's Comments

2017 Amendment: Chapter 23 in (2) after "notice of revocation and" substituted "deliver" for "send". Amendment effective October 1, 2017.

Effective Date: This section is effective October 1, 2011.

35-12-1314. Amendment of certificate of authority — requirements.

Compiler's Comments

Effective Date: Section 3, Ch. 43, L. 2015, provided that this section is effective on passage and approval. Approved February 18, 2015.

Part 14
Derivative Actions

35-12-1401. Derivative action.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language pertaining to derivative action for former language on right of action that read: "A limited partner may bring a derivative action in the right of a limited partnership to recover a judgment in its favor if the general partners having authority to do so have refused to bring the action or an effort to cause those general partners to bring the action is not likely to succeed." Amendment effective October 1, 2011.

35-12-1402. Proper plaintiff.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language relating to proper plaintiff for former language that read: "In a derivative action, the plaintiff must be a partner at the time of bringing the action and must have been a partner at the time of the transaction of which the plaintiff complains or the plaintiff's status as a partner must have devolved by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction." Amendment effective October 1, 2011.

1997 Amendment: Chapter 268 near beginning, after "action and", inserted "must have been a partner"; and made minor changes in style.

35-12-1403. Pleading.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on pleading for former language that read: "In any derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner having authority to do so or the reasons for not making the effort." Amendment effective October 1, 2011.

Case Notes

Failure of Limited Partners to Request General Partner to Initiate Suit: The limited partners sued the bank, alleging that the bank had forced the general partner to breach his fiduciary duty to the limited partners. The lower court dismissed the complaint for failure to state a claim, holding that the plaintiffs had not alleged that they were suing in a derivative capacity and that they had failed to set forth with particularity their efforts to obtain action by the general partner. The Supreme Court ruled that under former Rule 9(a), M.R.Civ.P. (now superseded), the plaintiffs did not need to allege that they were suing in a derivative capacity. The court also held that although former Rule 23.1, M.R.Civ.P. (now superseded), and this section require the plaintiffs to set out with particularity their efforts to get the general partner to take action, the lower court should have given the plaintiffs a chance to amend their complaint. Larson v. First Interstate Bank of Kalispell, 241 M 350, 786 P2d 1176, 47 St. Rep. 344 (1990).

35-12-1404. Proceeds and expenses.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on proceeds and expenses for former language on proceeds that read: "If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to account to the limited partnership for the remainder of the proceeds received by the plaintiff." Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-12-1405. Direct action by partner.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 15
Conversion

35-12-1501. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1502. Conversion.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1503. Action on plan of conversion by converting limited partnership.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1504. Filings required for conversion — effective date.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1505. Effect of conversion.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1511. Merger.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1512. Action on plan of merger by constituent limited partners.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1513. Filings required for merger — effective date.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1514. Effect of merger.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1515. Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1520. Liability of general partner after conversion or merger.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1521. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1522. Part not exclusive.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

CHAPTER 13
MINING PARTNERSHIPS

Part 1
Formation

35-13-101. When a mining partnership exists.

Case Notes

Liabilities Incurred Before Incorporation: When contract between holder of lease and bond on mining claim and others who contributed money for the operations contained all the requirements necessary to constitute a mining partnership and also provided that a corporation should be formed when contributors would exchange interests for stock therein, the contributors were responsible for liabilities incurred for operating expenses as mining partners under the agreement to join in immediate operation of mine, effective even if no corporation was ever formed. Meister v. Farrow, 109 M 1, 92 P2d 753 (1939).

Qualifications Not Required of Members: Members need not have skill or knowledge of the practical working of a mine; they need not have actual control of mining operations; a "grubstake" contract does not create the relationship; it is not necessary that all the partners actually participate in removal of minerals. Meister v. Farrow, 109 M 1, 92 P2d 753 (1939).

What Sufficient to Meet Requirements: Ownership of a lease and bond meets requirement of owning or acquiring a mining claim. Persons furnishing money for mining operations have sufficient interest in ownership to become members; those who contribute money for mining operations and share equally in the result are mining partners as much as those who work and supervise the mine. Meister v. Farrow, 109 M 1, 92 P2d 753 (1939).

Right of Surviving Partner to Partnership Property: The rule declared by Title 72, ch. 12, part 7 (now repealed), that in case of death of one member of partnership the surviving partner has right to all the partnership property and to settle its business and that the partnership assets form no part of individual estate of deceased partner until the partnership affairs have been wound up by the survivor applies to general trading partnerships only, not to mining partnerships. Bielenberg v. Higgins, 85 M 56, 277 P 631 (1929).

Creation by Law: Two things are requisite to a mining partnership: (1) that two or more persons own or acquire a mining claim for purpose of working it and extracting ore; (2) that they actually work the mine. When these factors are present, the law forms a mining partnership; no express agreement of partnership is necessary. State ex rel. Cole v. District Court, 79 M 1, 254 P 863 (1927).

Interest Under Agreement With Lessee: An interest in a mine under agreement with lessee will not support a mining partnership. Crystal Copper Co. v. Gaido, 5 F2d 881 (9th Cir. 1925).

General Partnership Distinguished: Mining partnerships differing from general partnerships were recognized by the decisions of this court before the enactment of this section July 1, 1895. Congdon v. Olds, 18 M 487, 46 P 261 (1896).

Rights of Cotenants: When plaintiff owned undivided three-fourths of mining claim and defendant, who owned the other one-fourth, also owned an adjoining claim through which it was extracting and appropriating to itself ore from vein alleged to have its apex in claim in which it was cotenant, no mining partnership existed since there was no actual working of mine by both owners, because the defendant alone was working the disputed portion. Anaconda Copper Min. Co. v. Butte & Boston Min. Co., 17 M 519, 43 P 924 (1896).

Part 2
Relations Between Partners and With Third Persons

35-13-201. When contract in writing is binding.

Case Notes

Operation and Effect: Mining partnership differs from general partnership in the statutory restriction prohibiting one member of mining partnership from binding partnership by written contract unless expressly authorized by other members. Wilkinson v. Bell, 118 M 403, 168 P2d 601 (1946).

Partners Liable for Machinery Purchased: Members of mining partnership were held liable for machinery purchased by one in charge of operations even though latter executed conditional sales contract without express authority by remaining members under this section when no rights were claimed by plaintiff under the contract and judgment in its favor was not based thereon. Meister v. Farrow, 109 M 1, 92 P2d 753 (1939).

35-13-202. Owners of majority interest govern.

Case Notes

Conduct of Business: Under this section holders of majority interest in mining partnership may do all things proper to its operations, take the necessary steps to preserve partnership property, and select counsel for it. State ex rel. Cole v. District Court, 79 M 1, 254 P 863 (1927).

Management and Control: Those who own majority interest in mining partnership are entitled to management and control. Boehme v. Fitzgerald, 43 M 226, 115 P 413 (1911).

35-13-204. Profits and losses — how shared.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-13-205. Lien of partner for debts due creditors.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Operation and Effect: Lien is given by statute for purpose of enabling a partner to collect from his copartners their proportion of an indebtedness that he has been compelled to pay. Bielenberg v. Higgins, 85 M 56, 277 P 631 (1929).

35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

35-13-207. Purchaser takes subject to liens — exception for good faith purchaser.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 14
MONTANA BUSINESS CORPORATION ACT

Chapter Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Chapter Case Notes

Decisions After 1992 General Revision

General 815
Formation — Articles of Incorporation — Bylaws 816
Directors and Officers 817
Shareholders and Shares 819
Merger — Consolidation — Share Exchange — Sale of Assets 819
Dissolution and Liquidation 821

Decisions Prior to 1992 General Revision

General 822
Formation — Articles of Incorporation — Bylaws 825
Directors and Officers 827
Shareholders and Shares 830
Merger — Consolidation — Share Exchange — Sale of Assets 833
Dissolution and Liquidation 835
Foreign Corporations 839
Annual Reports — Corporate Records 843

DECISIONS AFTER 1992 GENERAL REVISION

GENERAL

Shareholder Cannot File Claim Belonging to Corporation — Stranger to Contract — No Standing to Seek Damages — Summary Judgment Affirmed: A majority shareholder of a corporation filed suit for damages arising from the termination of the corporation's food services contract with the federal government against the defendants who sold a coffee urn for the corporation's use. The District Court properly granted summary judgment in favor of the defendants because the shareholder did not have standing to file claims that belonged to the corporation; he was not a party to the contract between the corporation and the federal government; and the deadline to amend his pleadings to include the corporation as a party had expired. Weaver v. Advanced Refrigeration, 2011 MT 174, 361 Mont. 233, 257 P.3d 378.

Doctrine of Corporation by Estoppel Versus De Facto Corporation Doctrine — Requisite Donative Intent to Show Inter Vivos Gift to Corporation by Estoppel: A church incorporated in 1998. The attorney who filed the incorporation subsequently moved out of state, and because annual reports were not filed, the Secretary of State involuntarily dissolved the church's corporate status in 2000. The church's corporate status was reinstated in 2004. The church was not aware that it was not a valid corporation when it received a gift of property in 2002, but claimed that it was nevertheless a de facto corporation able to accept the gift. The couple who donated the property claimed that because they did not know that the church was not a valid corporation, they should be allowed to revoke the gift and that the subsequent reinstatement of the church's corporate status after the couple sought to revoke the gift did not retroactively create donative intent that the couple had revoked. The Supreme Court distinguished the de facto corporation, which was abolished in this 35-1-119 (now repealed), from the doctrine of corporation by estoppel, which provides that a party that has dealt with a corporation cannot then deny the corporation's existence. The court applied the doctrine of corporation by estoppel to this case. It would be inequitable to allow defendants to escape possible liability just because the church, acting in good faith, was involuntarily dissolved at the time that the possible liability arose. Thus, defendants were equitably estopped from denying the corporate status of the church. The couple had the requisite donative intent to meet the definition of an irrevocable inter vivos gift, and as owner of the gifted property, the church had standing to sue. Valley Victory Church v. Sandon, 2005 MT 72, 326 M 340, 109 P3d 273 (2005).

Use of Corporation by Individual as Subterfuge — Piercing Corporate Veil to Hold Individual Liable for Breach of Lease: Defendant formed a corporation to render dental services and leased a building for a dental practice with two other dentists, including plaintiff. After the practice became successful, defendant demanded possession of the entire property by letter. When plaintiff did not respond, defendant vacated the building on behalf of the corporation and discontinued paying rent, but the decision was never documented in the corporation's records. Plaintiff sued for breach of the lease contract. Following trial, the District Court concluded that defendant was the alter ego of the corporation and the real party in interest under the lease and that it would be inequitable to allow defendant to use the corporation as a subterfuge to defeat public convenience or justify wrong. Thus, the corporate veil was pierced, and defendant was held personally responsible for damages arising from the breached lease. On appeal, the Supreme Court applied the test in Berlin v. Boedecker, 268 M 444, 887 P2d 1180 (1994), to determine whether circumstances were appropriate for piercing the corporate veil. The court noted that the veil may not be pierced simply because an individual is the alter ego of a corporation and the true party in interest. There must be substantial evidence that the corporate entity was used as a subterfuge to defeat public convenience, justify wrong, or commit fraud, but bad faith alone may be a sufficient cause for piercing the veil. Here, the corporation was unable to satisfy the judgment because it was undercapitalized from its inception, suggesting defendant acted in bad faith. Further, it was inequitable for defendant to personally profit from renting property to the corporation and protect himself from liability with the undercapitalized corporation. The judgment was affirmed. Peschel Family Trust v. Colonna, 2003 MT 216, 317 M 127, 75 P3d 793 (2003).

Previously Raised but Unlitigated Alter Ego Claim Not Barred by Res Judicata: Following a dispute over the sale of irrigation equipment, H-D Irrigating and Lane sued Kimble Properties and Kimble for false representation of the irrigation equipment and damages. Kimble Properties and Kimble counterclaimed for the balance due on the equipment, alleging that H-D Irrigating was a sham and the alter ego of Lane. The alter ego claim was never pursued. The Supreme Court eventually decided the case in H-D Irrigating, Inc. v. Kimble Properties, Inc., 2000 MT 212, 301 M 34, 8 P3d 95 (2000), and remanded for judgment in favor of Kimble. In an effort to collect, Kimble sought to compel Lane to testify regarding the assets of H-D Irrigating, but rather than appear, Lane filed bankruptcy and received a stay on further proceedings. Kimble then filed an action to collect from Lane personally, again raising the alter ego issue. Lane asserted that the issue had been already decided in the prior litigation and sought supervisory control on res judicata grounds. After accepting supervisory control, the Supreme Court decided that res judicata did not bar Kimble's litigation of the alter ego claim. The action to pierce the H-D Irrigating corporate veil was neither previously adjudicated in District Court nor were the facts upon which the claim was based known to Kimble at the time that the counterclaim was filed or at any other time during the course of the previous action. The case was thus remanded for further proceedings on the alter ego claim. Lane v. District Court, 2003 MT 130, 316 M 55, 68 P3d 819 (2003), applying Berlin v. Boedecker, 268 M 444, 887 P2d 1180 (1994).

Error in Modification of Rate for Legal Work: The partnership agreement of a limited partnership included a limitation on the general partners' ability to incur legal expenses, but provided that two of the partners could be employed to perform legal services for the partnership, and limited compensation to reasonable hourly rates in an amount not to exceed a total of $60,000 a year without approval. A dispute between partners resulted in a claim that the attorneys had charged excessive rates of $225 an hour and thus should be removed as directors. The District Court found that the attorneys overcharged and required repayment based on a reduced hourly rate. The Supreme Court disagreed and reversed. The contract language clearly allowed for employment of the attorneys, and the partnership was aware in advance of the attorneys' hourly rate. The fees were reasonable given the complexity of the specialized work and the fact that other attorneys in that field charged even higher rates. The District Court erred in modifying the rate for legal work. Sletteland v. Roberts, 2000 MT 382, 304 M 21, 16 P3d 1062, 57 St. Rep. 1639 (2000).

Piercing of Corporate Veil Inapplicable Against Sole Proprietorship: Piercing is used to eliminate an individual's corporate liability in cases in which one establishes that the shareholders are the alter ego of the corporation. Piercing is an equitable remedy and applies only to fraud or to achieve equity. The theory of piercing the corporate veil is inapplicable against a sole proprietorship and thus may not be applied in piercing the entity veil. Jerry Martin & Associates, Inc. v. Don's Westland Bulk, 267 M 464, 884 P2d 795, 51 St. Rep. 1119 (1994).

FORMATION — ARTICLES OF INCORPORATION — BYLAWS

Breach of Fiduciary Duty — Actions of Former Shareholders in Establishing Competing Accounting Firm — Remand for Calculation of Damages Caused by Breach: The plaintiff, an accounting firm, sued the defendants, former shareholders of a satellite office, after they established a new accounting firm and took most of the plaintiff's clients. The plaintiff claimed that the defendants had breached their fiduciary duty to the plaintiff. Of the several defendants, the District Court concluded that only one defendant, who had been branch manager of the firm and who had the plaintiff's client list downloaded for use in the new firm, had breached a fiduciary duty. However, the District Court also concluded that no damages stemmed from the breach. On appeal, the Supreme Court, while agreeing that only the branch manager had breached his fiduciary duty, remanded the issue of damages caused by the breach to the District Court. Junkermier v. Alborn, 2016 MT 218, 384 Mont. 464, 380 P.3d 747.

DIRECTORS AND OFFICERS

Corporation Must Be Represented — Attorney Required — Nonlawyer Subject to Contempt of Court: A corporation cannot appear on its own behalf through an agent other than an attorney. A nonlawyer who attempts to represent a corporation in court is guilty of a contempt of court, and the decision to hold a person in contempt rests in the trial court's discretion. Flathead Bank of Bigfork v. Masonry by Muller, Inc., 2016 MT 269, 385 Mont. 214, 383 P.3d 215, following Cont. Realty, Inc. v. Gerry, 251 Mont. 150, 822 P.2d 1083 (1991), Zempel v. Liberty, 2006 MT 220, 333 Mont. 417, 143 P.3d 123, and H & H Dev., LLC v. Ramlow, 2012 MT 51, 364 Mont. 283, 272 P.3d 657.

Applicability of Business Judgment Rule to Conflict of Interest Transaction: On a certified question from the Tenth Circuit Court of Appeals, the Montana Supreme Court held that the business judgment rule does not apply to challenges based on a director's conflict of interest. Warren v. Campbell Farming Corp., 2011 MT 324, 363 Mont. 190, 271 P.3d 36.

Bonus Subject to Safe Harbor Review: On a certified question from the Tenth Circuit Court of Appeals, the Montana Supreme Court held that the safe harbor provision of 35-1-462(2)(c) (now repealed) extends to cover a conflict of interest transaction involving a bonus that lacks consideration and that the meaning of "transaction" under this provision encompasses more than just a contract. Warren v. Campbell Farming Corp., 2011 MT 324, 363 Mont. 190, 271 P.3d 36.

Dissolved Corporation's Officer's Use of Corporate Funds for Personal Expenses: Although the Montana Business Corporation Act does not specifically limit a director's use of corporate property to corporate purposes, the limitation is implied by the duties of good faith and care fundamental to a director's relationship to the corporation. Absent shareholders consent, defendant, who was president, director, and majority shareholder of a corporation, was not authorized to use its money for noncorporate purposes, and after it was dissolved, he was required to hold its assets in trust until creditor and shareholder debts were satisfied. Therefore, he was not authorized to write checks on the corporation's account to pay his personal debts to his attorney and former wife. He produced no evidence to support his claim that his need to pay child support to his wife and that his arrest for failure to do so would negatively affect the company's future and therefore justified the checks to her. Furthermore, it was not in the best interests of winding up the dissolved corporation. Moreover, it was not a defense that because of his ownership interest in the company he was spending his own money. The shareholders have a vested equitable interest in a dissolved corporation's property, but do not have a legal ownership interest in the property until the creditors are paid and the winding up is complete, at which point the shareholders have a legal ownership interest deriving from their right to a pro rata share of the assets remaining after the creditors are paid. Because the corporation was insolvent when the checks were written, there would have been no assets left for the shareholders had the creditors been paid off at the time that the checks were written. Therefore, it could not be said that defendant stole their money, and the theft conviction was set aside. St. v. Debus, 2002 MT 307, 313 M 57, 59 P3d 1154 (2002).

Breach of Fiduciary Duty in Conversion of Corporate Property Without Requisite Notice and Shareholder Approval — Punitive Damages Unavailable Absent Showing of Actual Malice or Fraud: Phil was two-thirds majority shareholder in Trifad Entertainment, Inc. (Trifad), and Brad was one-third minority shareholder and Trifad director. Following Phil's extradition to Florida on racketeering charges, Brad secured a loan for $15,000, deposited the money in the Trifad account, and then sold virtually all of Trifad's assets to himself for $15,000. In addition, Brad wrote checks on Trifad's account for taxes owed and for estimated tax payments and withdrew one-third of the remaining balance and left two-thirds in the account, all without attempting to contact Phil. Phil later sued Brad for breach of contract, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, and conversion and requested punitive damages, contending that Brad's actions were performed with actual malice and constituted actual fraud.

At trial, Brad contended that the actions were reasonable considering Phil was in jail facing criminal charges, and Brad cross-claimed for indemnification from Trifad for litigation expenses and liabilities incurred in his capacity as Trifad director. The District Court found for Brad on all counts, but denied corporate indemnification. Both Phil and Brad appealed. The Supreme Court reversed, finding that Brad failed to comply with 35-1-823(now repealed) by selling corporate property without the requisite notice and shareholder approval. Although contacting Phil would have been difficult, it was not impossible. However, even if Phil had been unavailable for consultation, 35-1-823 (now repealed) does not contain any exceptions to the notice and approval requirements governing the sale of corporate assets. Further, the sale constituted conversion because Brad exercised unauthorized dominion over Trifad property by transferring ownership to himself. The case was remanded for a determination of damages, including possible damages other than those provided in 27-1-320 if peculiar circumstances warranted compensation for future lost income and profits. The District Court erred in concluding that Brad did not breach his fiduciary duties to Trifad; however, absent proof of actual malice or actual fraud, punitive damages were not warranted. Because a breach of fiduciary duty occurred, Brad could not claim to be wholly successful in the action, so Brad's claim for corporate indemnification also failed under 35-1-453(now repealed). Trifad Entertainment, Inc. v. Anderson, 2001 MT 227, 306 M 499, 36 P3d 363 (2001).

Lawsuit by Shareholder Causing Damages Considered Breach of Fiduciary Duty of Care: Sletteland brought a suit against two other corporate shareholders for charging excessive attorney fees and seeking their removal as corporate directors. The District Court held that the fees were excessive, but found no grounds for removal. The other shareholders filed a counterclaim against Sletteland, alleging that he breached his fiduciary duty in bringing the lawsuit because the timing of the suit caused refinancing of a project to fail, resulting in damage to the corporation and to other shareholders. The District Court agreed, and both parties appealed their respective issues. The Supreme Court reversed on the issue of excessive fees, but affirmed on the issue of breach of fiduciary duty. The fiduciary duty between shareholders of a close corporation is one of utmost good faith and loyalty. Sletteland admittedly knew of the refinancing and, as an attorney and investment banker, also knew the effect that a lawsuit alleging misconduct by board members would have on a refinancing effort. In fact, it appeared that the suit was brought to specifically derail the refinancing. Sletteland was the person who determined the timing of the suit, which was filed immediately before the individuals involved in the refinancing were to meet for discussions, and when asked to withdraw the suit so refinancing could conclude, he refused to do so. Sletteland did not use the care that an ordinarily prudent person would use in a similar situation, resulting in the breach of fiduciary duty. The Supreme Court also affirmed the award of damages. Although future damages could not be calculated exactly in this case, the District Court did not abuse its discretion in basing its calculations on expert testimony of a well-known regional economist. Sletteland v. Roberts, 2000 MT 382, 304 M 21, 16 P3d 1062, 57 St. Rep. 1639 (2000).

Misvaluation of Corporate Stock Not Constituting Breach of Fiduciary Duty: Following termination from employment with Bitterroot International Systems, Inc. (Bitterroot), Knutson sought to exercise his buyout rights under the shareholders' agreement. Bitterroot refused to pay and sought rescission on grounds that Knutson breached his fiduciary duty to Bitterroot, arguing that Knutson's mistaken valuation of stock acquired during the purchase of another business constituted a breach of that duty. Bitterroot did not contend that Knutson acted in bad faith, but only that he was wrong about the stock value. Applying the standard in 35-1-443 (now repealed), the Supreme Court found that Knutson's inaccurate stock valuation did not constitute a breach of fiduciary duty and that the District Court did not err in dismissing Bitterroot's claim that Knutson breached his fiduciary obligation. Knutson v. Bitterroot Int'l Sys., Inc., 2000 MT 203, 300 M 511, 5 P3d 554, 57 St. Rep. 800 (2000). See also 18A Am. Jur. 2d Corporations §451 and 18B Am. Jur. 2d Corporations §1705.

Right as Corporate Director Unsubstantiated — Injunction Properly Denied: Plaintiff, once the sole shareholder and director of Electronic Parts, Inc. (EPI), sold all interest in the corporation pursuant to a stock redemption agreement. When the director of EPI died, plaintiff sought two injunctions, alleging that as the sole remaining director of EPI, plaintiff was entitled to terminate EPI's legal counsel, to prohibit officers, agents, and employees from altering EPI documents, to inspect and review corporate records, and to prevent a shareholders' meeting. When the District Court denied both injunctions, plaintiff appealed, alleging that the court abused its discretion. The Supreme Court affirmed, ruling that the lower court's finding that the evidence did not support plaintiff's claim of directorship was not clearly erroneous. As a result, plaintiff had no right to terminate EPI's legal counsel, to inspect records, or to enjoin a shareholders' meeting. Smith v. Electronic Parts, Inc., 274 M 252, 907 P2d 958, 52 St. Rep. 1215 (1995).

SHAREHOLDERS AND SHARES

Unanimous Agreement of Shareholders Valid: Brothers and sole shareholders of a close corporation reached an agreement allowing transfer of shares to family members when one or both of them died in contradiction of the bylaws of the corporation. One brother later contested the validity of the agreement for informality. The District Court upheld the agreement, and the Supreme Court affirmed, finding that the agreement met all requirements under Montana law. Needham v. Kluver, 2019 MT 182, 396 Mont. 500, 446 P.3d 504.

Fees and Costs, Including Costs of Appeal, Properly Awarded in Derivative Claim Action: In Sletteland v. Roberts, 2000 MT 382, 304 M 21, 16 P3d 1062 (2000), the Supreme Court held that the District Court committed reversible error in ruling in favor of plaintiff on a derivative claim action because the claim was not reasonable in light of the serious jeopardy in which it placed the corporation and its refinancing efforts. On remand, the District Court awarded defendant attorney fees and costs pursuant to 35-1-547 (now repealed), and plaintiff appealed. In determining an award for statutory attorney fees, a court may grant the prevailing party fees incurred in its litigation of the initial claim and the corresponding counterclaim if the court cannot clearly segregate the attorney's time in litigating both claims. In this case, the derivative claim and counterclaim shared a common core of complex facts and interrelated issues, so segregation of fees was not possible. Therefore, the District Court did not err in awarding defendants' fees incurred in litigating both the derivative claim and counterclaim. Further, defendants successfully defended this appeal, incurring further attorney fees and costs, so the Supreme Court remanded for a calculation of fees owed to defendants for this appeal. Sletteland v. Roberts, 2003 MT 17, 314 M 76, 64 P3d 979 (2003), following Donnes v. Orlando, 221 M 356, 720 P2d 233 (1986), and Nason v. Leistiko, 1998 MT 217, 290 M 460, 963 P2d 1279 (1998). See also DeTienne v. Sandrock, 2018 MT 269, 393 Mont. 249, 431 P.3d 12.

Summary Judgment — Alleged Invalidity of Promissory Notes — Stockholder Status Not Prerequisite for RICO Claim: In a suit seeking payment on promissory notes, the first of which was executed in exchange for 1,500 shares of stock, the validity of the note was challenged on the grounds that it was in violation of 35-1-606 (now repealed), which provided that neither promissory notes nor future services constitute payment for shares of a corporation. The Supreme Court held that it was error for the lower court to grant summary judgment when the record did not contain sufficient facts to allow a determination of the invalidity of the promissory notes at issue and that it was further error to dismiss defendant's RICO counterclaims because stockholder status is not a prerequisite for standing to bring a RICO claim. Kuhns v. Koessler, 266 M 339, 880 P2d 1293, 51 St. Rep. 800 (1994).

MERGER — CONSOLIDATION — SHARE EXCHANGE — SALE OF ASSETS

Punitive Damages Correctly Awarded Against Successor Corporation — False Affidavits — Failure to Supplement Discovery: The plaintiff financed a home through the defendant bank's predecessor. The plaintiff requested a 30-year residential loan and was told by the predecessor bank that she received this loan. However, the predecessor bank issued an 18-month commercial loan and did not inform the plaintiff. The plaintiff sued alleging fraud. A jury eventually awarded $1 million in compensatory damages and $5 million in punitive damages against the successor bank. On appeal, the defendant argued that it can't be liable for punitive damages as a successor corporation and that the punitive damages award was grossly excessive. The Supreme Court held that the federal Bank Merger Act and 35-1-817 (now repealed) required the bank to be liable for punitive damages and that the award was not excessive in light of U.S. Supreme Court decisions. McCulley v. U.S. Bank of Montana, 2015 MT 100, 378 Mont. 462, 347 P.3d 247.

Claim for Stockholder Oppression Properly Dismissed — Legitimate Business Reason for Action: The defendants were shareholders of a closely held family corporation. The board of directors granted voting rights to a new class of stock, which reduced the defendants' overall voting power, and subsequently sought a declaratory judgment on the matter. Ultimately, the defendants counterclaimed alleging oppression and asking the District Court to dissolve the corporation. The District Court dismissed the counterclaim, ruling that the board had a legitimate business purpose in granting the voting rights and had taken reasonable efforts to protect the defendants' interests. On appeal, the Supreme Court agreed that the defendants had not provided a legally sufficient basis for maintaining an oppression claim and affirmed the dismissal of the claim. Wyo-Ben, Inc. v. Bixby, 2014 MT 334, 377 Mont. 318, 339 P.3d 1255.

Decrease of Voting Interest From 18% to 10.75% — Material and Adverse Impact to Shareholder — Remanded to Calculate Value of Shares: The defendants were shareholders of a closely held family corporation. The board of directors granted voting rights to a new class of stock, which reduced the defendants' overall voting power, and subsequently sought a declaratory judgment on the matter. The District Court concluded that none of the defendants were entitled to be paid for any of their shares because they had not been materially and adversely impacted. On appeal, the Supreme Court reversed the decision as it applied to one of the shareholders whose voting interest decreased from 18% to 10.75% due to the board action, and it remanded the matter for sinthe District Court to calculate the value of that shareholder's shares. Wyo-Ben, Inc. v. Bixby, 2014 MT 334, 377 Mont. 318, 339 P.3d 1255.

Exchange of Corporate Property Not Contemplated in Stockholder Agreement — Minority Shareholder Entitled to Notice of Dissenters' Rights: The provisions of a stockholders' agreement dealt with procedures for the sale and transfer of shares but did not contemplate an exchange transaction of all corporate property or a fundamental change in the corporate form. Therefore, the Montana Business Corporation Act, Title 35, ch. 1 (now repealed), including provisions giving rise to dissenters' rights, rather than the provisions of the stockholders' agreement itself, controlled the resolution of the exchange transaction. Under the Act, a dissenting shareholder may demand that the corporation buy back that shareholder's shares at fair value if the corporation takes an action that fundamentally alters the character of the shareholder's investment. Because the corporation president and majority shareholder exchanged virtually all the corporate property other than in the ordinary course of business, all minority shareholders should have been notified of the proposed exchange or should have been allowed to vote on the proposal at a stockholders' meeting and should have been notified of dissenters' rights within 10 days after the exchange. The minority shareholders' mere failure to object to the exchange did not constitute a waiver of their dissenters' rights because they were never given notice of their right to dissent. Hansen v. 75 Ranch Co., 1998 MT 77, 288 M 310, 957 P2d 32, 55 St. Rep. 322 (1998).

Sale of Minority Shares to Majority Shareholder or Corporation — Discount Inappropriate: A minority discount is inappropriate when calculating fair value for the sale of a minority shareholder's shares in a closely held corporation to a majority shareholder or to the corporation. A minority discount recognizes that controlling shares are worth more in the market than are noncontrolling shares. However, because there is no market involved in an inside transfer of shares, the minority discount should not be applied to an inside transfer. Rather, the minority shareholder is entitled to fair value for the shares, pursuant to 35-1-827 (now repealed). Fair value, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects. Hansen v. 75 Ranch Co., 1998 MT 77, 288 M 310, 957 P2d 32, 55 St. Rep. 322 (1998), overruling McCann Ranch, Inc. v. Quigley-McCann, 276 M 205, 915 P2d 239 (1996).

Restrictive Transfer Provision Not Intended to Prohibit Corporation Liquidation: Plaintiff, a minority stockholder in a closely held family corporation, filed an action alleging that the corporation's preemptive right provision was triggered when the remaining stockholders accepted plaintiff's offer to purchase the stock at book value. On appeal, the Supreme Court affirmed the District Court's reliance on Dobry v. Dobry, 262 P2d 691 (Okla. 1953), ruling that a minority shareholder may not rely on a restrictive transfer provision to prohibit the liquidation and sale of corporate assets. Stufft v. Stufft, 276 M 310, 916 P2d 104, 53 St. Rep. 409 (1996).

Declaratory Judgment Action by Ranching Corporation Not Action for Full Value of Minority Shares: McCann Ranch, Inc. (MRI), brought a declaratory judgment action against Sharon in order to determine the value of her 600 minority shares for purposes of the dissolution of her marriage. Sharon argued that she should have been paid the full value of her shares because certain actions of MRI were illegal, oppressive, fraudulent, or unfairly prejudicial. The Supreme Court held that the actions of MRI in paying outstanding corporate debts, ceasing payment of dividends, and leasing corporate property did not constitute illegal, oppressive, fraudulent, or unfairly prejudicial acts. The Supreme Court also held that the action brought by Sharon was not pursuant to 35-9-501 because it was brought as a declaratory judgment action by the corporation. McCann Ranch, Inc. v. Quigley-McCann, 276 M 205, 915 P2d 239, 53 St. Rep. 349 (1996), overruled, to the extent that a majority discount was held to be appropriate when calculating fair value for the sale of a minority shareholder's shares in a closely held corporation to a majority shareholder or to the corporation, in Hansen v. 75 Ranch Co., 1998 MT 77, 288 M 310, 957 P2d 32, 55 St. Rep. 322 (1998).

"Fair Value" of Minority Shares Not Precluding Application of Minority Discount Value: McCann Ranch, Inc. (MRI), brought a declaratory judgment action against Sharon in order to

determine the value of her 600 minority shares for purposes of the dissolution of her marriage. Sharon argued that she would not be paid the fair value of her shares if the shares were valued using a discount for minority shares. The Supreme Court held that nothing in 35-1-826 (now repealed) precluded the consideration of a minority shareholder's lack of control over the affairs of the corporation and of the lack of marketability of minority shares in determining the fair value of those shares. McCann Ranch, Inc. v. Quigley-McCann, 276 M 205, 915 P2d 239, 53 St. Rep. 349 (1996), overruled in Hansen v. 75 Ranch Co., 1998 MT 77, 288 M 310, 957 P2d 32, 55 St. Rep. 322 (1998).

Payment of Attorney Fees Not Required — Inclusion of Litigation Cost in Corporate Value Approved: McCann Ranch, Inc. (MRI), brought a declaratory judgment action against Sharon in order to determine the value of her 600 minority shares for purposes of the dissolution of her marriage. Sharon argued that the District Court erred in refusing to award her attorney fees and costs. The Supreme Court held that inasmuch as the action was a declaratory judgment action brought by the corporation, attorney fees were not payable. The Supreme Court noted that even if the action had been a minority shareholder action, award of attorney fees was discretionary. The District Court did not abuse its discretion because there was no "prevailing party" in the action. The Supreme Court also held that the District Court did not err in the calculation of MRI's litigation expenses for inclusion in the corporate assets prior to valuation of Sharon's shares because the expenses as valued by Sharon were not supported by the record. McCann Ranch, Inc. v. Quigley-McCann, 276 M 205, 915 P2d 239, 53 St. Rep. 349 (1996).

DISSOLUTION AND LIQUIDATION

Claims for Breach of Duties Against Corporate Representatives Not Prohibited by Corporate Dissolution: The plaintiff sued the defendant, a corporation owned by the plaintiff and his estranged siblings, seeking dissolution of the entity and damages. The plaintiff alleged breach of fiduciary duties and misappropriation of corporate funds. After the parties eventually agreed to the dissolution, the District Court dissolved the company under 35-1-938 (now repealed) and appointed a receiver. Subsequently, the plaintiff filed a motion seeking to amend his complaint to assert punitive damages and clarify compensatory damages and other discovery motions. The District Court dismissed the complaint for lack of subject matter jurisdiction, reasoning that 35-1-939 (now repealed) authorizes dissolution of a corporation or other equitable remedies, but not both. On appeal, the Supreme Court reversed, holding that after a court grants dissolution, 35-1-938 and 35-1-939 (now both repealed) do not foreclose a claimant from pursuing claims against individual shareholders or officers or directors for breach of fiduciary duties. Kulko v. Davail, Inc., 2015 MT 340, 381 Mont. 511, 363 P.3d 430.

Fiduciary Duty — Oppressed Shareholder Claim: Brian Whitehorn took and sold grain belonging to Whitehorn Farms, Inc., beyond what had been authorized by the corporation. The other officers, directors, and shareholders of the corporation viewed Brian's actions of taking the additional bushels as theft or conversion. They held a special meeting and removed Brian as a director, officer, and employee of the corporation. The special meeting was properly noticed, and Brian received notice of the meeting but did not attend. Brian filed suit claiming he was an oppressed shareholder and that the corporation should be dissolved or that it should be forced to repurchase his shares. The corporation filed a counterclaim for conversion of corporate property. The District Court found no oppression and denied Brian's petition and granted the corporation's counterclaim. Brian appealed. The Supreme Court found that Brian was not an oppressed shareholder. The termination of Brian's employment and officer status was properly conducted at a meeting for which notice was given and was in response to Brian's wrongdoing. The court also found that the corporation was under no obligation to buy Brian's shares and the failure to purchase the shares was not oppression. Brian's situation regarding the shares was the same as that of the other shareholders. The fact that the shares are not readily marketable is typical of closely held corporations. In addition, Brian did not have any capital investment in the shares, having acquired them by inheritance. Whitehorn v. Whitehorn Farms, Inc., 2008 MT 362, 346 M 405, 195 P3d 844 (2008).

Damages Payable for Corporate Partner's Breach of Fiduciary Duty: In dissolving a corporation, the District Court found that one partner had breached a fiduciary duty to the corporation, causing damages. However, the District Court did not make a specific dollar finding for the amount of damages or award the corporation any compensation. The Supreme Court reversed and remanded for a determination of damages to be paid to the corporation by the partner who breached the fiduciary duty. Attorney fees were properly denied because the corporate agreement contained no provision for award of attorney fees to the prevailing party in a civil action. Sartori

v. S&S Trucking, Inc., 2006 MT 164, 332 M 503, 139 P3d 806 (2006), following Nat'l Cas. Co. v. Am. Bankers Ins. Co. of Fla., 2001 MT 28, 304 M 163, 19 P3d 223 (2001).

Dissolution of Corporation Based on Director Deadlock and Inability to Conduct Business to Advantage of Shareholders: Although two partners, who were the sole corporate shareholders, were undisputedly deadlocked in the management of corporate affairs, one partner contended that the District Court erroneously dissolved the corporation without finding that the corporation had been or was threatened with irreparable injury. However, the threat of corporate injury is only one condition for dissolution under subsection (2)(a) of 35-1-938 (now repealed). Another condition exists if the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders because of the deadlock. Here, the deadlock led one of the partners to take numerous steps to sabotage the corporation, so business was no longer conducted to the advantage of both shareholder partners. A threat of irreparable injury is not a prerequisite to dissolution, and the District Court had statutory authority to dissolve the corporation. Sartori v. S&S Trucking, Inc., 2006 MT 164, 332 M 503, 139 P3d 806 (2006), followed in Kulko v. Davail, Inc., 2015 MT 340, 381 Mont. 511, 363 P.3d 430.

Plaintiff's Ability to Maintain Action Against Defunct Corporation: In an asbestos contamination case, 47 plaintiffs sued 53 defendants in Cascade County, including one defendant, Robinson Insulation Company (Robinson), that was a defunct corporation. Another defendant, Atlantic Richfield Company (Atlantic) moved for a change of venue to Flathead County, contending that as a defunct corporation, Robinson did not reside in Cascade County at the commencement of the action and had been improperly joined so that venue could be maintained in Cascade County. However, Robinson's status as a defunct corporation did not mandate a change of venue. The corporate survival statutes, 35-1-395 and 35-1-937 (now both repealed), maintained the status quo concerning corporate rights and responsibilities before and after dissolution, including actions against defunct corporations. Atlantic's argument that application of this interpretation to Robinson would require impermissible retroactive application of the corporate survival statutes failed because Robinson acquired no vested right to be free from liability before the running of the statute of repose in former 35-1-930 (repealed 1991). Denial of Atlantic's motion to change venue was affirmed. Allen v. Atl. Richfield Co., 2005 MT 281, 329 M 230, 124 P3d 132 (2005), following Williams v. Hartford Accident & Indem. Co., 174 M 387, 571 P2d 90 (1977).

Venue Determined by Allegations in Complaint — Venue for Case Against Defunct Corporation: In an asbestos contamination case, 47 plaintiffs sued 53 defendants in Cascade County, including one defendant, Robinson Insulation Company (Robinson), that was a defunct corporation that had resided in and operated out of Cascade County. Defendant Atlantic Richfield Company (Atlantic) moved for a change of venue to Flathead County, contending that Robinson did not reside in Cascade County at the commencement of the action and had been improperly joined so that venue could be maintained in Cascade County. The motion for change of venue was denied, and Atlantic appealed. The Supreme Court noted that a motion to change the place of trial brought in a proper county may not be granted and that for tort actions the proper venue is the county where any defendant resided at the commencement of the action or the county where the tort was committed. The court applied the principles of Petersen v. Tucker, 228 M 393, 742 P2d 483 (1987), in holding that the court will not go beyond the allegations in the complaint to determine questions of venue. Plaintiffs named Robinson as a defendant in both the original and amended complaint, and the District Court did not dismiss Robinson as a defendant, so Cascade County was a proper venue for the case. Denial of the motion for change of venue was affirmed. Allen v. Atl. Richfield Co., 2005 MT 281, 329 M 230, 124 P3d 132 (2005).

DECISIONS PRIOR TO 1992 GENERAL REVISION

GENERAL

No Right of Individual Guarantor to Sue on Behalf of Corporation: Under former Rule 17(a), M.R.Civ.P. (now superseded), an action must be brought by the person who is entitled to enforce the right according to the governing substantive law and will not necessarily be brought in the name of the person who will ultimately benefit from the recovery. In the case of corporations, neither the Montana Business Corporation Act nor the Montana Close Corporation Act provides for an individual guarantor to sue on behalf of the corporation. Therefore, the District Court did not err in determining that claims for misuse and misappropriation of corporate funds could not be brought by individual plaintiffs. Kondelik v. First Fidelity Bank of Glendive, 259 M 446, 857 P2d 687, 50 St. Rep. 874 (1993).

Organization Holding Itself Out as Corporation Estopped From Denying Legality of Its Corporate Existence: The plaintiffs sought to bring an action for attorney malpractice on their own behalf, arguing that the corporation had ceased to legally exist. The Supreme Court ruled that since the corporation had continued to act as a corporate entity after it had expired, the plaintiffs were estopped from challenging its corporate status. Stott v. Fox, 246 M 301, 805 P2d 1305, 47 St. Rep. 2040 (1990).

Reverse Piercing of Corporate Veil Not Allowed: The plaintiffs sued the defendant for attorney malpractice. The Supreme Court affirmed the lower court's decision, holding that the plaintiffs, as shareholders of a corporation, could not pursue an action on their own behalf when the cause of action accrues to the corporation. Stott v. Fox, 246 M 301, 805 P2d 1305, 47 St. Rep. 2040 (1990).

Dual Prongs for Piercing Corporate Veil — Evidence of Fraud Sufficient: There are two prongs to piercing the corporate veil. First, the person purporting to represent the corporation must be found to be the corporate "alter ego". Second, there must be a showing that the corporate entity was used as a subterfuge to defeat public convenience, justify wrong, or perpetrate either actual or constructive fraud. Drilcon, Inc. v. Roil Energy Corp., Inc., 230 M 166, 749 P2d 1058, 45 St. Rep. 114 (1988), followed in Berlin v. Boedecker, 268 M 444, 887 P2d 1180, 51 St. Rep. 569 (1994).

Commonality of Interests Insufficient to Justify Disregard of Corporate Separateness: On appeal from a declaratory judgment that a proposed transaction to merge into a subsidiary triggered preemptive right and resignation provisions of a venture agreement, the Supreme Court found that evidence did not establish a commonality of interests between defendant corporations sufficient to justify disregard of their corporate separateness. Meridian Minerals Co. v. Nicor Minerals, Inc., 228 M 274, 742 P2d 456, 44 St. Rep. 1516 (1987).

Grounds Found for Piercing Corporate Veil: The Supreme Court found the following elements to be sufficient indicia of control and domination of E.C.A. Environmental Management Services, Inc. (E.C.A.) by Montana Merchandising Incorporated (MMI) for the purpose of piercing the corporate veil and finding that MMI and E.C.A. were one and the same corporation: (1) MMI owned 100% of the capital stock of E.C.A.; (2) virtually all corporate formalities had been abandoned by E.C.A. prior to execution of the contract that was the basis of this litigation; (3) each of E.C.A.'s directors was also a director of MMI; (4) MMI routinely transferred funds from E.C.A. to its own account; (5) E.C.A.'s bank account was managed by MMI; (6) the contract was first discussed at an MMI Board of Directors meeting; (7) at the time the contract was made, E.C.A. was undercapitalized, owed MMI almost $1.5 million, and had pledged its assets to MMI as security; and (8) E.C.A.'s operations were financed by MMI. The court further held that the "subterfuge to ... justify wrong" requirement necessary to pierce a corporate veil is satisfied by a showing of bad faith on the part of the controlling corporation, and that there is no requirement of a positive showing of fraud. E.C.A. Envtl. Management Serv., Inc. v. Toenyes, 208 M 336, 679 P2d 213, 41 St. Rep. 388 (1984).

Operation of Affiliated Corporations as Single Business: Affiliated corporations operated together as a single business, although separately incorporated, are incapable of conspiring under section 1 of the Sherman Anti-Trust Act (15 U.S.C. § 1). Murray v. Toyota Motor Distributors, Inc., 664 F2d 1377 (9th Cir. 1982).

Standing to File Construction Lien Despite Construction Corporation's Involuntary Dissolution: Plaintiff asserted that defendant had no standing to file a construction lien because defendant's corporation had been involuntarily dissolved for failure to file the first annual corporate report. The District Court disagreed, and the Supreme Court affirmed. Defendant filed the lien as an individual claimant and had standing to pursue the lien as a person who furnished services pursuant to a real estate improvement contract. It would have been inequitable for plaintiff to avoid an obligation because the corporation had been involuntarily dissolved after acting in good faith through its principals, and plaintiff was properly estopped from denying the status of the corporation. Weimar v. Lyons, 2007 MT 182, 338 M 242, 164 P3d 922 (2007), following Kosena v. Eck, 195 M 12, 635 P2d 1287 (1981).

Listing Property as Corporate Property to Secure Loan — Estoppel to Deny Corporate Ownership: In a conversion action by a bank against its corporate president for selling, in his individual capacity and retaining the proceeds, property that he had knowledge of and acquiesced to being listed as corporate property to secure a corporate loan, he could not, under the provisions of 26-1-601, allege that the corporation did not own the property. Farmers St. Bank v. Johnson, 188 M 55, 610 P2d 1172 (1980).

Loans by Officers Contrary to Resolution — Estoppel to Deny Loan: Even though a corporate resolution stated that the president, vice president, and secretary or any two of them were empowered to act in the name of the corporation, a note and security agreement signed only by two vice presidents was enforceable because if a corporation receives and retains the fruit of a loan, impliedly ratifying it, the corporation is estopped to deny the authority of the vice presidents to borrow the money. Farmers St. Bank v. Johnson, 188 M 55, 610 P2d 1172 (1980).

Proof: An income statement, standing alone, does not prove insolvency of a corporation. Archer v. LaMarch Creek Ranch, 174 M 429, 571 P2d 379 (1977).

De Facto Corporation — Capacity to Contract: A de facto corporation has the same capacity to contract as a de jure corporation. Proof of de facto corporate existence is sufficient when the validity of a contract by a body of men claiming to be a corporation is in issue in a suit between third persons. Mont. Ass'n of Underwriters v. Dept. of Administration, 172 M 211, 563 P2d 577 (1977).

Eminent Domain Power: Legislature under 35-1-108 (now repealed) has empowered utility companies to acquire property by eminent domain. Mont. Power Co. v. Bokma, 153 M 390, 457 P2d 769 (1969).

Banks: The requirement of section 15-808, R.C.M. 1947 (now repealed), that a corporation "commence the transaction of its business or the construction of its works within 1 year from the date of its incorporation" was not applicable to banks which are governed by section 5-207, R.C.M. 1947 (now 32-1-321, MCA). First Nat'l Bank in Billings v. First Bank Stock Corp., 306 F2d 937 (9th Cir. 1962).

Determination of Nature of Association for Federal Income Tax Purposes: Although under state law at the time of the decision a corporation could not be organized to practice medicine, yet an association that has the criteria of a corporation could be considered a corporation for federal tax purposes. The determination of the nature of associations for federal tax purposes is not by the state criteria but rather by the special criteria sanctioned by the tax law, the regulations, and the courts. U.S. v. Kintner, 216 F2d 418 (9th Cir. 1954).

Fraud — Disregard of Corporate Entity by Courts: Courts may disregard a corporate entity when the corporate organization is used for the purpose of perpetrating fraud. When a parent (foreign) corporation and a subsidiary thereof act as one in the transaction of business, the former cannot avoid liability under its contract on the ground of its assignment to the latter. Wilson v. Milner Hotels, Inc., 116 M 424, 154 P2d 265 (1944).

Defenses Held Collateral Attack: The defense of a corporation and one of its stockholders in an action by another stockholder to recover on a corporate note, that the note was void because the corporate powers of the company had lapsed upon the retirement of one of the directors who had sold his stock to the other two, constituted a collateral attack on the corporation. The defendant corporate stockholder was not in a position to assert that under the facts the activities of the corporation constituted a partnership between himself and plaintiff, the only other stockholder, so as to entitle him to halt the foreclosure of the mortgages and obtain an accounting. Dunham v. Natural Bridge Ranch Co., 115 M 579, 147 P2d 902 (1944).

Corporation Not Authorized to Practice Law: Nothing contained in section 15-104, R.C.M. 1947 (now repealed), authorized a corporation to practice law. State ex rel. Freebourn v. Merchants' Credit Serv., Inc., 104 M 76, 66 P2d 337 (1937), overruled on another point in Rae v. Cameron, 112 M 159, 114 P2d 1060 (1943).

Party Contracting With Ostensible Corporation Not to Deny Its Corporate Identity: One who has contracted with an ostensible corporation (in the instant case for the purchase of real property) may not deny its corporate identity when it is attempting by an action in ejectment to oust him after his defaults in making payment. An instrument designating a party as a corporation is prima facie evidence of corporate existence, sufficient under section 15-806, R.C.M. 1947 (now repealed). Norwegian Lutheran Church of Am. v. Armstrong, 112 M 528, 118 P2d 380 (1941).

Estoppel: One who enters into a written contract with a corporation, designated as such therein, and thereunder incurs a financial obligation is estopped, under section 15-806, R.C.M. 1947 (now repealed), providing against the questioning of corporate existence, from denying the corporate capacity of plaintiff in an action to recover thereon. W. T. Rawleigh Co. v. Miller, 105 M 456, 73 P2d 552 (1937).

Power to Issue Notes: In the absence of a state statute prohibiting ordinary industrial corporations from borrowing money on promissory notes or a showing that a particular corporation by its articles of incorporation or its bylaws is prohibited from so doing, a mining corporation, under section 15-801, R.C.M. 1947 (now repealed), impliedly granting such power when necessary to be exercised in the transaction of its ordinary affairs or for corporate purposes, may do so. Alley v. Butte & W. Min. Co., 77 M 477, 251 P 517 (1926).

Effect of Corporate Abeyance on Liability: When the entity of a corporation has fallen into a condition of abeyance, the public is not supposed to know of the fact; hence, where strangers have dealt with the corporation, it can be held for all obligations assumed by its officers in its name. Hanson Sheep Co. v. Farmers & Traders' St. Bank, 53 M 324, 163 P 1151 (1917).

When and by Whom a Corporation May Be Attacked: The rule that the legal capacity of a corporation cannot be inquired into collaterally in a controversy between the corporation and a private person does not preclude examination by the courts into the facts of a particular case to determine the identity of a person who uses the name of a corporation for his own purposes and to fix liability upon him for the ostensible corporate acts. Hanson Sheep Co. v. Farmers & Traders' St. Bank, 53 M 324, 163 P 1151 (1917), distinguished in Dunham v. Natural Bridge Ranch Co., 115 M 579, 147 P2d 902 (1944).

Defect in Perfecting Organization: A corporation that has been engaged in business, apparently in good faith, cannot avoid liability on the ground that its directors, in the conduct of its private affairs, never observed the forms of law in perfecting the organization and therefore that it had ceased to exist as a corporation. Daily v. Marshall, 47 M 377, 133 P 681 (1913).

Membership Corporation: Sections 15-401 and 15-601, R.C.M. 1947 (now repealed), recognized that there may be corporations without a capital stock. Daily v. Marshall, 47 M 377, 133 P 681 (1913).

Supplying Water to Public: Section 15-104, R.C.M. 1947 (now repealed), authorized the formation of a corporation to supply water to the public; and section 15-109, R.C.M. 1947 (now repealed), gave further recognition to the same right. Bailey v. Tintinger, 45 M 154, 122 P 575 (1912).

Power to Condemn Generally: The provisions of section 15-810, R.C.M. 1947 (now repealed), and 69-14-531, 69-14-532, 69-14-533, 69-14-539, 69-14-552, 69-14-558, and 69-14-561 (all now repealed, formerly 72-201 and 72-205, R.C.M. 1947) are exceedingly liberal, but they must be interpreted in the light of 70-30-111 (formerly 93-9905, R.C.M. 1947), and the rule of necessity must be determinative of the right to take in each instance. N. Pac. Ry. v. McAdow, 44 M 547, 121 P 473 (1912).

Acquisition of Stock in Another Corporation: At the time of the case, the only provisions concerning merger of corporations were found in sections 15-104, 15-620, and 15-1603, R.C.M. 1947 (now repealed), authorizing one corporation to acquire shares of stock in another. United Missouri River Power Co. v. Yoder, 41 M 245, 108 P 912 (1910).

Eminent Domain: By section 15-1708, R.C.M. 1947 (now repealed), the Legislature intended to give foreign corporations the same power to exercise eminent domain as domestic corporations enjoy. Spratt v. Helena Power Transmission Co., 37 M 60, 94 P 631 (1908).

Eminent Domain: Section 15-1201, R.C.M. 1947 (now repealed), relating to scope of corporation laws, furnished no authority for the exercise of the right of eminent domain by a foreign corporation. Helena Power Transmission Co. v. Spratt, 35 M 108, 88 P 773 (1907).

The changing of the channel of a stream which would otherwise have to be crossed by a railway to conform to the route selected by it, when necessary to make the road secure for life and property, is a part of the construction of the road, and authority is granted to secure the necessary amount of land to make such change by means of condemnation proceedings. State ex rel. Bloomington Land & Live Stock Co. v. District Court, 34 M 535, 88 P 44 (1906). See Archer v. Chicago, Milwaukee & St. Paul Ry., 41 M 56, 108 P 571 (1910); N. Pac. Ry. v. McAdow, 44 M 547, 121 P 473 (1912); Postal Telegraph-Cable Co. of Am. v. Nolan, 53 M 129, 162 P 169 (1916).

Storage of Goods: Under section 15-104, R.C.M. 1947 (now repealed), a corporation could be organized for the purpose of storing goods in a warehouse for shipment. Orient Ins. Co. v. N. Pac. Ry., 31 M 502, 78 P 1036 (1905).

Street Railway: Section 15-111, R.C.M. 1947 (now repealed), authorized the formation of a corporation to own and operate a street railway. Cent. Trust Co. of N.Y. v. Warren, 121 F 323 (9th Cir. 1903).

FORMATION — ARTICLES OF INCORPORATION — BYLAWS

Thirty-Day Notice Requirement: Section 35-1-207 (now repealed) formerly included a sentence requiring 30 days' notice of a meeting at which a vote would be taken to increase the number of shares set forth in the articles of incorporation. In a decision made under that provision, because of the factual situation, including voting of 96% of stock, unanimous recommendation of directors, and "equities", court determined that party is estopped from asserting invalidity of the amendment to articles of incorporation on grounds of lack of notice. Ski Roundtop, Inc. v. Hall, 202 M 260, 658 P2d 1071, 40 St. Rep. 74 (1983).

Action by State: Section 15-808, R.C.M. 1947 (now repealed), providing for inquiry into corporate business or incorporation, limited its effect to an action by the State at the suit of the

Attorney General. First Nat'l Bank in Billings v. First Bank Stock Corp., 306 F2d 937 (9th Cir. 1962), affirming 197 F. Supp. 417 (D.C. Mont. 1961).

Construction of Amendatory Act: Chapter 7, L. 1931 (since repealed), dealing with the life of corporations, was not impliedly repealed by Ch. 38, L. 1931, which amended section 15-201, R.C.M. 1947 (now repealed), having to do with the amendment of the articles of incorporation containing, however, inter alia, a provision referring to the extension of a corporation's existence, there being under the interpretation adopted no conflict between the acts. State ex rel. Nagle v. The Leader Co., 97 M 586, 37 P2d 561 (1934).

Right to Challenge Corporate Existence: When the records of the Secretary of State show that a company has been regularly incorporated and is carrying on business as a corporation, it must be considered at least a corporation de facto. The state alone, by a direct proceeding for that purpose, can challenge its existence or its right to do business in the state. Sun River Stock & Land Co. v. Mont. Trust & Sav. Bank, 81 M 222, 262 P 1039 (1928), distinguished in Springer v. Opsahl, 229 M 10, 744 P2d 884, 44 St. Rep. 1738 (1987).

Presumption: Section 15-117, R.C.M. 1947 (now repealed), presumed a corporation with capital subscribed under the condition precedent implied by the general rule or in accordance with an agreement had by the subscribers either at the time they made their subscriptions or thereafter. Enterprise Sheet Metal Works v. Schendel, 55 M 42, 173 P 1059 (1918).

Sufficiency of Pleading: The allegation that plaintiff was duly incorporated under the laws of the state by the subscribers to the subscription contract in pursuance of the terms thereof was not a sufficient averment that all the conditions of the contract had been fulfilled. Enterprise Sheet Metal Works v. Schendel, 55 M 42, 173 P 1059 (1918).

Corporations Organized Prior to 1895 — Applicable Law: Where a mining corporation, organized under the Compiled Statutes of 1887, never elected to do business under the Code of 1895 or subsequent legislation, the powers of its board were determined by the provisions of section 15-121, R.C.M. 1947 (now repealed). Kleinschmidt v. Am. Min. Co., Ltd., 49 M 7, 139 P 785 (1914).

When and by Whom a Corporation May Be Attacked: After a corporation has been lawfully organized, its character as such cannot be inquired into collaterally at the instance of a private citizen in a controversy between him and it, and its legal capacity can be brought in question by the State only through its proper officer, as prescribed in section 15-808, R.C.M. 1947 (now repealed), and for one of the causes enumerated in 27-28-102. Barnes v. Smith, 48 M 309, 137 P 541 (1913).

Compliance with Code: It was the purpose of the Legislature to prohibit inquiry in any private civil action into the question whether the ostensible corporation has a legal existence, further than to ascertain whether the requirements prescribed by the section of the code relative to the formation of corporations have been observed. Daily v. Marshall, 47 M 377, 133 P 681 (1913).

Failure to Perfect Organization: When a corporation has been regularly brought into existence, it is not deprived of the right to exercise corporate functions by the failure of the directors, designated by the statute, to perfect the organization by taking steps subsequent to the issuance of the certificate by the Secretary of State. Daily v. Marshall, 47 M 377, 133 P 681 (1913).

When and by Whom a Corporation May Be Attacked: Failure to comply with statutory provisions relative to the formation of corporations does not ipso facto work a dissolution or permit the question of corporate capacity to be raised collaterally by a private citizen in a controversy between him and the corporation. Daily v. Marshall, 47 M 377, 133 P 681 (1913).

Corporations Organized Prior to 1895: Section 15-117, R.C.M. 1947 (now repealed), relating to evidence of corporate existence or capacity, cannot refer to a corporation organized prior to July 1, 1895, for in terms it applies only to institutions of the kind to which certificates of incorporation have been issued, or what is the same thing organized since the adoption of the codes. Billings Realty Co. v. Big Ditch Co., 43 M 251, 115 P 828 (1911).

Issuance of Certificate Prior to 1895 Since the year 1895, there has been no provision for the issuance of a certificate to a corporation formed prior thereto, but proof of the existence of such a corporation could be made under prior laws. Sections 15-117 and 15-118, R.C.M. 1947 (now repealed), cannot be held to declare the only rule of evidence in a case involving proof of corporate existence but apply only to corporations organized since the adoption of the codes. Billings Realty Co. v. Big Ditch Co., 43 M 251, 115 P 828 (1911).

Application of Section: Before the 1929 amendment, section 15-112, R.C.M. 1947 (now repealed), requiring that articles of incorporation be filed in county where corporation held real estate, applied to domestic corporations only. Uihlein v. Caplice Commercial Co., 39 M 327, 102 P 564 (1909).

Prerequisite to Legal Formation: The issuance by the Secretary of State of a certificate that a certified copy of the articles of incorporation of a company organized under the provisions of the Civil Code of 1895, containing the required statement of facts, had been filed in his office, was a prerequisite to the legal formation of a domestic corporation. State ex rel. Travelers' Ins. Co. v. Rotwitt, 18 M 87, 44 P 409 (1896).

DIRECTORS AND OFFICERS

Existence of Covenant of Good Faith and Fair Dealing Not Implied in Employment of Corporate Officer: Mannix argued that the board of directors had breached the covenant of good faith and fair dealing when they fired him. The Supreme Court held that the covenant was not implied in the employment relationship between Mannix and the corporation and that Mannix acknowledged that he was aware when hired that he served at the discretion of the board of directors. Mannix v. Butte Water Co., 249 M 372, 854 P2d 834, 50 St. Rep. 691 (1993).

Corporate Officer Without Authority for Pro Se Representation of Corporation — Refusal to Consider Brief: Plaintiff realty corporation brought an action in District Court to find defendants in default for failure to make payments under a contract for deed. Plaintiff was represented by counsel in District Court, but on appeal, it was represented by the president of the corporation. The Supreme Court, sua sponte, raised the issue of whether the corporation could be represented by its president and held that it could not. Citing Weaver v. Law Firm of Graybill, 246 M 175, 803 P2d 1089 (1990), the Supreme Court held that a corporation is a separate legal entity and cannot appear on its own behalf through an agent other than an attorney. The Supreme Court therefore determined not to consider the brief filed by the president on behalf of the corporation. Cont. Realty, Inc. v. Gerry, 251 M 150, 822 P2d 1083, 48 St. Rep. 1134 (1991).

Pro Se Practice of Law by Corporate Shareholders and Directors Prohibited: Although shareholders and directors of a corporation have the right under 35-1-930 (now repealed) to take action on behalf of the corporation, that does not entitle those persons to practice law on behalf of the corporation. A corporation is a separate legal entity and cannot appear through an agent other than an attorney. Representation by a stockholder or director who is not an attorney constitutes contempt of court punishable under 37-61-210. Weaver v. Law Firm of Graybill, Ostrem, Warner & Crotty, 246 M 175, 803 P2d 1089, 47 St. Rep. 2316 (1990).

Piercing Corporate Veil Doctrine — Refusal to Apply: The doctrine of piercing the corporate veil to avoid fraud or injustice was not applied in a suit for damages arising from defects in a modular home manufactured and installed by defendant where there was no evidence that the corporation was defectively formed or formed to avoid personal liability on the part of the officers. Little v. Grizzly Mfg., 195 M 419, 636 P2d 839, 38 St. Rep. 1994 (1981).

Public Policy Against Personal Liability of Agent: As a matter of public policy, the officers and agents of a corporation must be shielded from personal liability for acts they take on behalf of the corporation in furtherance of corporate goals, policies, and business interests. Little v. Grizzly Mfg., 195 M 419, 636 P2d 839, 38 St. Rep. 1994 (1981).

Property Listed as Corporate Property — Estoppel From Asserting Personal Ownership: A corporate officer was estopped from defending against a conversion action by a bank involving the sale and retention of proceeds by him of property that he claimed he personally owned but that was listed, with his knowledge and acquiescence, as company property in company financial statements and as company assets to secure a company loan. The Supreme Court, in applying the principles of equitable estoppel enumerated in Hustad v. Reed, 133 M 211, 321 P2d 1083 (1958), determined that by allowing others to rely on documents that purported to show company ownership of the property, the officer may not now assert he is the true owner. Farmers St. Bank v. Johnson, 188 M 55, 610 P2d 1172 (1980).

Malicious Inducement of Breach of Contract — Individual Liability of Corporate Agents, Employees, Officers, or Directors: In a case of first impression in Montana, the issue was whether agents, employees, officers, or directors of a corporation may be held liable individually for the tort of malicious inducement of a breach of an employment contract. The resolution of the appeal depended upon a weighing of public policy considerations. The court held that the corporate veil should not be utilized as a protective device by those who employ corporate power or authority to serve their own ends. Tort liability for the inducement of breach of contract should be imposed when a corporate agent, employee, officer, or director induces a breach of contract for private benefit or because of personal feeling and purposes relative to a third party. The privilege of limited liability should be applicable in those situations where actions are motivated and taken in the furtherance of corporate purposes, policies, and interests. When plaintiff/appellant failed to show that the actions of individual defendants were not taken in furtherance of corporate purposes and interests, the summary judgment granted to the defendants was affirmed. Phillips v. Mont. Educ. Ass'n, 187 M 419, 610 P2d 154 (1980), followed in Bottrell v. Am. Bank, 237 M 1, 773 P2d 694, 46 St. Rep. 561 (1989), Lachenmaier v. First Bank Sys., Inc., 246 M 26, 803 P2d 614, 47 St. Rep. 2244 (1990), Mannix v. Butte Water Co., 249 M 372, 816 P2d 441, 48 St. Rep. 782 (1991), and King v. Zimmerman, 266 M 54, 878 P2d 895, 51 St. Rep. 659 (1994).

Implied Authority of Corporate President — Doctrine of Estoppel to Enforce Lease Option: When two of the corporation's three directors, one of whom was the corporate president and controlling shareholder, signed an option to lease land agreement, the corporation could not assert lack of corporate authority as a defense to the lease option obligation because of the implied authority of a corporate president to act on behalf of the corporation. The doctrine of estoppel was applicable. Hauptman v. Edwards, Inc., 170 M 310, 553 P2d 975 (1976).

Liability on Contracts: Notwithstanding the provision of 35-1-401 (now repealed) that the business and corporate affairs shall be managed by a board of directors, a close corporation in which the bulk of the stock was owned by the president, and the rest by his wife and son who also served as vice-president and secretary respectively, could not avoid liability to perform an option agreement on the ground that the president and secretary had no authority to bind the corporation on such agreements without the ratification of the board of directors, which had not occurred, because (1) the officers had express or implied power to make such an agreement, (2) even if they did not, the officers were estopped to deny the option by their course of conduct, and (3) as owners of the corporation they were not entitled to rely on the corporate form to shield them from their obligations. Hauptman v. Edwards, Inc., 170 M 310, 553 P2d 975 (1976).

Liability of Officers and Directors: Under the statute at the time of the case providing for liability of directors for failure to file the required annual report, the directors were liable to creditors only for debts contracted during period corporation was in default in filing annual report but if the report when filed was false, officers and not directors were liable to creditors for damages resulting therefrom; a false report was not the same as no report, nor should the court refrain from enforcing annual report requirements because the statute did not require sufficient facts to apprise public of the corporation's financial condition. Mtn. St. Supply v. Mtn. St. Feed & Livestock Co., 149 M 198, 425 P2d 75 (1967).

Discretion of Directors: When the board of directors in good faith considered it not in the best interests of the corporation not to prosecute an action on behalf of the corporation against another, a dissenting director and stockholder could not force the board to prosecute the action by means of an action against the board and the third party. Brooks v. Brooks Pontiac, Inc., 143 M 256, 389 P2d 185 (1963).

When Corporate Entity in Abeyance: When the capital stock passes into the hands of a single person, the entity of the corporation, except so far as it is necessary to protect the rights of strangers who deal with it through its ostensible officers and agents, is entirely in abeyance and its functions for the time being cease. Commercial Credit Co. v. O'Brien, 115 M 199, 146 P2d 637 (1943), appeal dismissed in 323 US 665 (1944); Scott v. Prescott, 69 M 540, 223 P 490 (1924), (citing numerous authorities).

Power to Sell Assets: In the absence of statute expressly so providing, the directors of a solvent corporation have no authority to dispose of accumulated property except in furtherance and in the ordinary course of its business; corporations have no power to make gifts ultra vires. Hanrahan v. Andersen, 108 M 218, 90 P2d 494 (1939).

When Consent Judgment Against Corporation a Nullity: When the president of a corporation disregarded stockholders, directors, officers, bylaws, and the statutes in the conduct of corporate affairs, the contention that under a resolution adopted at a directors' meeting (held without a quorum) he had a right to compromise actions against the corporation and that therefore a judgment entered against it with his consent constituted a consent judgment by the corporation, the rights of which were not considered in entering it, was without merit since the corporation could not have consented to it under such circumstances. Hanrahan v. Andersen, 108 M 218, 90 P2d 494 (1939).

Must Be in Office for Liability to Attach — Estoppel: One who was not the treasurer of a corporation at the time a stockholder demanded a financial statement of its condition under section 15-606, R.C.M. 1947 (now repealed), could not be made such under the doctrine of estoppel based on certain annual reports that bore his name as treasurer; the rule being otherwise when the rights of a third person dealing with the corporation through the treasurer relied upon such reports to his damage, in which case the corporation would be estopped. The liability attaches to the treasurer as an official by virtue of the office, and not otherwise. Stanton Trust & Sav. Bank v. Johnson, 107 M 348, 85 P2d 336 (1938).

Requirement That Evidence Support Contention of Fictitious Resignation: When defendant, sought to be held for the penalty prescribed by section 15-606, R.C.M. 1947 (now repealed), for failure to furnish a statement of the financial condition of his corporation as treasurer, showed by the records of a special meeting of directors some 6 weeks prior to the demand for such statement that his resignation had been accepted and his successor elected, the contention of plaintiff that the records were sham and fictitious was not supported by evidence. Stanton Trust & Sav. Bank v. Johnson, 107 M 348, 85 P2d 336 (1938).

Venue for Action to Recover Penalty: The Legislature, in enacting section 15-606, R.C.M. 1947 (now repealed), did not intend to repeal or change the then existing laws relating to the right to demand a change of venue. "Jurisdiction" is the authority to hear and determine; "venue" is the place of trial. With no statutory direction as to manner of delivery of the statement, the treasurer could mail it from the county seat where he lived and where the corporation had its principal place of business, hence the cause of action resulting from his refusal arose in that county and place of trial was properly changed to that county. Stanton Trust & Sav. Bank v. Johnson, 104 M 235, 65 P2d 1188 (1937).

Directors Governing Body: The board of directors of a corporation and not its stockholders conducts and controls its business and property, so long as it acts in the manner prescribed by law. Pioneer Minerals Corp. v. Larabie Bros. Bankers, Inc., 99 M 358, 43 P2d 884 (1935).

Qualification of Director: The provision of section 15-401, R.C.M. 1947 (now repealed), which required that "directors of corporations for profit must be holders of stock therein in an amount to be fixed by the bylaws of the corporation" unquestionably contemplated that the directors should be bona fide holders of the qualifying stock. Sun River Stock & Land Co. v. Mont. Trust & Sav. Bank, 81 M 222, 262 P 1039 (1928); Scott v. Prescott, 69 M 540, 223 P 490 (1924); Barnes v. Smith, 48 M 309, 137 P 541 (1913).

Qualification of Director: To render one eligible to the office of a director of a private corporation, his name, under section 15-401, R.C.M. 1947 (now repealed), was required to appear on its books as one of its stockholders and, under section 15-504, R.C.M. 1947 (now repealed), if his name did not so appear thereon 10 days prior to an election of directors, he could not vote at such election. Gillies v. Robert E. Lee Min. Co., 78 M 402, 254 P 422 (1927).

Powers of President: The general implication, that when the president of a corporation makes a contract within the ordinary scope of the corporation a person dealing with the president may proceed upon the assumption that the officer has authority to bind his principal, must be more strongly drawn when the instrument in question is a promissory note of the corporation; but when it is shown that like notes issued by the officer in the name of the corporation and signed by its president and secretary with the corporate seal affixed were ratified thereby, the testimony tends to prove a custom and acquiescence from which implied authority may be presumed. Alley v. Butte & W. Min. Co., 77 M 477, 251 P 517 (1926).

Admission of One Director Not Binding: The directors of a corporation act for it only as a body, and therefore admissions or declarations of an individual director are not binding upon it unless authority to make them was duly conferred. Raish v. Orchard Canal Co., 67 M 140, 218 P 655 (1923).

False Certificate: The bylaws of a corporation provided that a special meeting of the board of directors could be called by the president or at his request by the secretary. The secretary and the third member of the board were without authority to call such a meeting. A surety company which relied upon the secretary's certificate that he had been empowered at the meeting to enter into a contract of indemnity in behalf of the corporation did so at its peril. Aetna Cas. & Sur. Co. v. Am. Brewing Co., 63 M 474, 208 P 921 (1922).

Powers of Secretary: The secretary of a corporation has no authority by virtue of his office alone to bind the corporation by contract. Aetna Cas. & Sur. Co. v. Am. Brewing Co., 63 M 474, 208 P 921 (1922).

Statute Supplanted by Bylaws When They Provide for Special Meetings: Under the express terms of section 15-502, R.C.M. 1947 (now repealed), the method therein provided for the calling of special meetings of the directors of a corporation had no application when the bylaws declare how such meetings shall be called. Aetna Cas. & Sur. Co. v. Am. Brewing Co., 63 M 474, 208 P 921 (1922).

Power to Sell Assets: Under the common-law powers reserved to corporations under section 15-901, et seq., R.C.M. 1947 (now repealed), and enumerated in a general way in sections 15-401 and 15-801, R.C.M. 1947 (now repealed), the Board of Directors of a going corporation could, in the proper pursuit of its business and within the purposes of its creation, against the dissent of a minority of its stockholders, sell a leasehold interest in realty with improvements thereon, and when such sale was made before plaintiffs had judgment against the selling corporation, they acquired no title under execution sale, and nonsuit was properly granted in their action in ejectment against the purchaser. Wortman v. Luna Park Amusement Co., 61 M 89, 201 P 570 (1921), explained in N. Min. Corp. v. Trunz, 124 F2d 14 (9th Cir. 1941).

Liability on Contracts: A corporation cannot be held liable for preliminary contracts made by its promoters authorized by a majority of its incorporators or stockholders but is only bound on such contracts as are made by its board of directors acting within the scope of their powers or by ministerial officers empowered to make them. Kirkup v. Anaconda Amusement Co., 59 M 469, 197 P 1005 (1921).

Notice of Resignation: An informal written notice delivered to the president of a corporation by one of its directors, to the effect that the writer thereby resigned his office as such, was sufficient, the method prescribed by section 15-409, R.C.M. 1947 (now repealed), in this behalf being permissive, not exclusive. Goodrich Rubber Co. v. Helena Motor Car Co., 53 M 526, 165 P 454 (1917).

When and by Whom a Corporation May Be Attacked: When there is no board of directors or secretary of a corporation, the entire capital stock of which is owned by a man and his wife, and when the man is president and has used the corporation to further his own personal ends, he is estopped to claim that he and the corporation are distinct entities, that he bears a fiduciary relation toward it, and that he had no authority to authorize a bank, with which he had deposited money for the corporation, to apply the deposit in discharge of his personal obligation. Hanson Sheep Co. v. Farmers & Traders' St. Bank, 53 M 324, 163 P 1151 (1917), distinguished in Dunham v. Natural Bridge Ranch Co., 115 M 579, 147 P2d 902 (1944).

Duty of Directors Generally: While it is entirely competent for the directors to manage and conduct the business of the corporation through duly authorized agents, the directors themselves are the agents ultimately responsible. They therefore cannot abdicate their duties or permit others to act in their stead for the corporation or the stockholders. Deschamps v. Loiselle, 50 M 565, 148 P 335 (1915).

Qualification of Director: In requiring the directors of a corporation having capital stock to be stockholders, the Legislature intended that the directors should be bona fide owners of stock. The result of the requirement is that when the capital stock passes into the hands of a single person, the entity of the corporation, except so far as it is necessary to protect the rights of strangers who deal with it through its ostensible officers and agents, is entirely in abeyance, and its functions for the time being cease. Barnes v. Smith, 48 M 309, 137 P 541 (1913).

Qualification of Director: Upon the assumption that the sale of his stock in a corporation ipso facto vacated the office of the seller as a director, such result did not follow when at the time of a special meeting of the board negotiations for the sale, though pending, were not completed. O'Rourke v. Grand Opera House Co., 47 M 459, 133 P 965 (1913).

When Notice Is Dispensable: Notice in writing to the members of the board of directors of a corporation of the holding of a special meeting was not indispensable to the legality of the proceedings when all the directors attended and participated without objection in the dispatch of the business in hand. The only object of the notice is that the directors have an opportunity of being present at the meeting and taking part in its proceedings. O'Rourke v. Grand Opera House Co., 47 M 459, 133 P 965 (1913).

Agreement to Continue Trustees in Office: A contract by which it was agreed that certain persons should be trustees until the business of a mining corporation should be in successful operation was contrary to section 3830, Revised Codes 1907, prior to 1915 amendment (later 15-403, R.C.M. 1947, now repealed), and void. Glass v. Basin & Bay St. Min. Co., 31 M 21, 77 P 302 (1904).

False Report: The trustees of a corporation, who filed a report which did not specify as a debt of the company its liability on a covenant of title, are not liable for a false report if at the time the report was filed the breach of the covenant was not known to them, and such a report is not false in stating that the capital was paid in full because of the mere fact that the property for which it was issued has decreased in value. Giddings v. Holter, 19 M 263, 48 P 8 (1897).

SHAREHOLDERS AND SHARES

Assertion of Error in Redesignation of Custodian as Receiver — Claim Dismissed for Lack of Jurisdiction: A shareholder did not have standing to defend any claims properly belonging to the corporation or to pursue an appeal on behalf of the corporation for claims belonging to the corporation. Thus, the shareholder's claim on appeal that the District Court erred by redesignating a custodian as a receiver pursuant to 35-1-941 (now repealed) was dismissed for lack of jurisdiction. Johnson v. Booth, 2008 MT 155, 343 M 268, 184 P3d 289 (2008), following Richland Nat'l Bank & Trust v. Swenson, 249 M 410, 816 P2d 1045 (1991).

Corporation Considered Real Party in Interest on Claim for Lost Corporate Profits — No Exception for S. Corporations: Gullett paid $10,000 earnest money for the purchase of real property. The money was drawn on the account of Gullett's corporation. When defendants refused to return the money after the purchase agreement failed, Gullett filed a complaint for return of the money and for profits allegedly suffered by the corporation's business through lack of the funds. Although the money was ultimately repaid to Gullett, the District Court summarily dismissed the claim for lost business profits on grounds that the corporation, not Gullett, was the real party in interest. On appeal, the Supreme Court affirmed. The cause of action for recovery of lost business profits belonged to the corporation, not to a shareholder. Gullett's argument that he should not be barred from the claim because the corporation was an S. corporation also failed because even though an S. corporation is treated differently for taxation purposes, it remains a corporation in all other ways, and the corporation and its shareholders remain separate entities. Gullett v. Van Dyke Constr. Co., 2005 MT 105, 327 M 30, 111 P3d 220 (2005), following Richland Nat'l Bank & Trust v. Swenson, 249 M 410, 816 P2d 1045 (1991), and followed in Cleveland v. Ward, 2016 MT 10, 382 Mont. 118, 364 P.3d 1250. See also Smith Setzer & Sons, Inc. v. S.C. Procurement Review Panel, 20 F3d 1311 (4th Cir. 1994).

No Personal Liability on Part of Bank Officer: The Supreme Court held that Scott was entitled to summary judgment, dismissing Kuhns's suit against him because Kuhns had presented no evidence, merely speculation, that Scott had acted for his own pecuniary interest and against the best interests of the corporation. Kuhns v. Scott, 259 M 68, 853 P2d 1200, 50 St. Rep. 685 (1993).

Contract Action — Sole Owners Asserting Wrongs Done to Corporation: In bank's action against corporation to collect on corporation's note, two sole owners of the corporation did not, as individuals and sole owners, have a right to assert any cause of action arising from bank's refusal to continue financing the corporation because sole owners were attempting to assert as wrongs to themselves claims that belonged to the corporation. Richland Nat'l Bank & Trust v. Swenson, 249 M 410, 816 P2d 1045, 48 St. Rep. 730 (1991), followed in Johnson v. Booth, 2008 MT 155, 343 M 268, 184 P3d 289 (2008).

Basic Elements of Partnership by Estoppel: The two basic elements required to demonstrate partnership by estoppel are: (1) that a person or entity represent to a third party that he is dealing with a partnership even though no partnership exists; and (2) that the third party rely to his detriment. When an oral contract was negotiated and entered, the contracting party did not specifically state that he represented either a partnership or a corporation, but did refer to the other individuals involved as his "partners". This representation could lead a reasonable person to believe he was dealing with a partnership and, when coupled with the fact that the "partners" would have benefited financially by having the third party perform the contracted work, demonstrated a partnership by estoppel. Springer v. Opsahl, 229 M 10, 744 P2d 884, 44 St. Rep. 1738 (1987).

Share Transfer Restrictions Valid and Enforceable: Shareholders in a closely held farming and ranching corporation executed a buy-sell agreement providing that as long as the shareholders were alive, stock could not be sold by one shareholder without the written consent of the other shareholders. The agreement also provided that a shareholder wishing to sell stock must first offer it to the corporation and then to the remaining shareholders. The District Court properly held that such share transfer restrictions contained within the buy-sell agreement were valid and enforceable. Gray v. Harris Land & Cattle Co., 227 M 51, 737 P2d 475, 44 St. Rep. 886 (1987).

Exception Allowing Direct Shareholder Action Not Adopted: Some jurisdictions recognize an exception to the need for derivative remedies by allowing a shareholder to bring a direct action when the defendants control the corporation and a derivative action would place any judgment into the corporate treasury and therefore under the defendants' control (citing cases). However, the Ninth Circuit Court of Appeals declined to adopt the exception, finding on overriding policy concern in avoiding unnecessary litigation resulting from separate suits by individual shareholders whenever the value of shares is impaired by a wrong to the corporation. Sax v. World Wide Press, Inc., 809 F2d 610 (1987).

Partnership by Estoppel — Corporate Shareholders: The shareholders of a corporation can be liable as partners to a person dealing with the corporation if through some action or inaction of the corporation the person reasonably believes he is dealing with a partnership and relies upon that belief in dealing with the corporation. In this case there were various partnerships and a corporation, all with similar names and consisting of the same people, and although some evidence tended to show that operations of the corporation were apparently partnership operations, the existence of a partnership by estoppel is a factual issue, and in this case summary judgment finding such a partnership was improperly granted because factual issues remained. Gamble Robinson Co. v. Carousel Properties, 212 M 305, 688 P2d 283, 41 St. Rep. 1757 (1984).

Disregard of Corporate Identity: The corporate identity may be disregarded and the identity of purchasers on a contract may be considered one where an individual controlling shareholder utilizes the corporation as a subterfuge to perpetrate fraud. Motion to dismiss is properly denied. Flemmer v. Ming, 190 M 403, 621 P2d 1038, 37 St. Rep. 1916 (1980).

No Surplus Funds — Affirmative Defense: In the absence of proof that surplus funds were not available, an affirmative defense alleging that repurchase of stock by use of a promissory note violated 35-1-612 (now repealed) was denied. Archer v. LaMarch Creek Ranch, 174 M 429, 571 P2d 379 (1977).

Conducting Business Without Meeting: When the directors of a corporation are the only stockholders, they may act for the corporation without formal meetings. Formal meetings can also be waived by custom or general consent, and informal approval of the dismissal of an employee by directors who had control of a majority of the corporation's stock was valid. Myhre v. Myhre, 170 M 410, 554 P2d 276 (1976).

Effect of Failure to Give Notice: Director of closely held corporation was estopped to assert invalidity of vote by which remaining directors elected to repurchase his shares of stock pursuant to repurchase agreement when he was notified several times during a 90-day period of the board's resolution to repurchase his stock and when at no time during this period did he ever object to not receiving notice of the meeting at which the resolution was passed. State ex rel. Howeth v. D. A. Davidson & Co., 163 M 355, 517 P2d 722 (1973), overruled, with regard to elements of collateral estoppel, in Dagel v. Great Falls, 250 M 224, 819 P2d 186, 48 St. Rep. 919 (1991).

Payment for Stock as Consideration for Services: Payments of money made to a television cable corporation upon the issuance of stock to Class B stockholders, which were not made for stock but rather for services rendered and to be rendered by the corporation, constituted ordinary taxable income under section 61(a) of the Internal Revenue Code of 1954. The purported stock purchases were in fact payments required of subscribers in consideration of such services. Community T.V. Ass'n of Havre v. U.S., 203 F. Supp. 270 (D.C. Mont. 1962).

Cumulative Voting: A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. Sensabaugh v. Polson Plywood Co., 135 M 562, 342 P2d 1064 (1959).

Stockholders' Meetings Not Statutory Requirement for Organization of Business Corporation: The holding of a stockholders' meeting is not one of the requirements made by section 15-111, R.C.M. 1947 (now repealed), for organizing business corporations, nor does the failure to hold such meetings within the state constitute, under section 15-1101, R.C.M. 1947 (now repealed), an automatic dissolution of the corporation without reference to the question whether it would justify a direct proceeding for dissolution. Golden Rod Min. Co. v. Bukvich, 108 M 569, 92 P2d 316 (1939).

Secondary Liability: In the case of Kelly v. Clark, 21 M 291, 53 P 959 (1898), and King v. Pony Gold Min. Co., 28 M 74, 72 P 309 (1903), this court construed section 15-615, R.C.M. 1947 (now repealed), imposing liability upon stockholders "until the whole amount of the capital stock subscribed for shall be paid in", as imposing a liability secondary to that of the company for its debts, and held that the remedy against the stockholders did not accrue until the remedy against the company had been exhausted. Mitchell v. Banking Corp. of Mont., 83 M 581, 273 P 1055 (1929).

Special Administrator: The provision of section 15-505, R.C.M. 1947 (now repealed), that shares of stock owned by an estate may be represented by the executor or administrator, is broad enough to include a special administrator, if under any conceivable circumstances the probate court may authorize such officer, in the absence of statute in terms permitting it, to vote such stock. Gow v. Cascade Silver Mines & Mills Co., 66 M 488, 213 P 1092 (1923).

Notwithstanding section 15-406, R.C.M. 1947 (now repealed), the general executive officer of a corporation may specifically or by implication be authorized by the directors thereof to conduct its business under their directions. Edwards v. Plains Light & Water Co., 49 M 535, 143 P 962 (1914).

Quorum Sufficient to Transact Business: When only three out of five directors provided for in the articles of incorporation as the number constituting the board of directors of a railroad corporation had been selected by the stockholders, the corporate acts of the three, constituting as they did a quorum, were valid as against an attack by one outside the corporation or by the State so long as they acted either unanimously or by a majority of such quorum. Great Falls & Teton County Ry. v. Ganong, 48 M 54, 136 P 390 (1913).

Authority of Stockholders: Before the stockholders of a corporation can go into court, they must first exhaust their remedy within the corporation itself. Because of the power and authority lodged in the stockholders to elect directors, courts of equity refuse to listen to their complaints unless it appears that the situation of the parties is such that they cannot secure relief from the corporate authorities. Brandt v. McIntosh, 47 M 70, 130 P 413 (1913), explained in Noble v. Farmers Union Trading Co., 123 M 518, 216 P2d 925 (1950), distinguished in Malcom v. Stondall Land Co., 129 M 142, 284 P2d 258 (1955). See Moss v. Goodhart, 47 M 257, 131 P 1071 (1913).

Void Assessment: Prior to the 1919 amendment, section 15-721, R.C.M. 1947 (now repealed), providing for other corporations making stock assessable, was intended to and did make the individual stockholder and not the share of stock the unit of voting power, and such a change made with the consent of only 96 out of 301 stockholders, though it was made by those owning more than three-fourths of the company's stock, was without effect, and an assessment levied in pursuance thereof was void. Smith v. Iron Mtn. Tunnel Co., 46 M 13, 125 P 649 (1912).

Ratification of Directors, When Presumed: The action of the stockholders of a corporation at a meeting at which every outstanding share of stock was duly represented and voted in favor of the issuance of a certain number of shares to the promoters of the company in payment for their services, a majority of the directors being present and assenting, will be considered to have been ratified by the board of directors. Fitzpatrick v. O'Neill, 43 M 552, 118 P 273 (1911).

Mode of Payment: There can be no presumption that the capital stock of a corporation shall be considered to be paid for in money. St. v. Clements, 37 M 314, 96 P 498 (1908).

Purchase of Property: Section 15-619, R.C.M. 1947 (now repealed), was direct authority for the receipt by a domestic corporation of mines, manufactories, and other like property in payment of the capital stock, and such stock shall be considered fully paid-up stock; it tends with other provisions of the law to show that the capital stock of a foreign corporation may consist in whole or in part of something other than money. St. v. Clements, 37 M 314, 96 P 498 (1908).

Repurchase of Capital Stock: The mere repurchase of capital stock by a corporation would not tend to decrease it unless the directors should absolutely merge or extinguish the stock after its repurchase. If it is unlawful to decrease the capital stock, presumptively the directors did not violate the law. It would require some positive showing to the contrary to overturn this presumption. Porter v. Plymouth Gold Min. Co., 29 M 347, 74 P 938 (1904).

MERGER — CONSOLIDATION — SHARE EXCHANGE — SALE OF ASSETS

Sufficiency of Attorney's Signature After Expiration of Statute of Limitations on Reply: A petition for valuation of shares of stock was timely filed but without the signature of a Montana attorney. The signing of the petition after expiration of the 60-day statute of limitations on the reply, accomplished promptly after the attorney was made aware of objection by defense counsel, clearly was within the exception of former Rule 11, M.R.Civ.P. (now superseded), allowing late signatures. Gold Reserve Corp. v. McCarty, 228 M 512, 744 P2d 160, 44 St. Rep. 1723 (1987).

Corporate Control by Single Shareholder Insufficient to Warrant Piercing Corporate Veil: Where a mining venture agreement provided for corporate merger by which the "surviving entity shall possess substantially all of the stock, or all of the property rights and interests, and be subject to substantially all of the liabilities and obligations" of the incorporating participant, the Supreme Court held that control over a corporation by a single shareholder was not, by itself, enough to warrant piercing the corporate veil. Meridian Minerals Co. v. Nicor Minerals, Inc., 228 M 274, 742 P2d 456, 44 St. Rep. 1516 (1987).

Effect of Merger on Claims Against Companies Involved: The accident upon which a negligence claim was based occurred when the manufacturer of the garage door involved was insured by Western. When this lawsuit was filed, the manufacturer had been acquired through a merger by another company. The second company was insured by Travelers. Each of the policies involved was an "occurrence" policy. Under 35-1-817 (now repealed), it was proper to name the second company as defendant in the action, but Western, the only company insuring the manufacturer at the time of the injury, was the only company obligated to pay any claim arising from the accident. Travelers Ins. Co. v. W. Fire Ins. Co., 218 M 452, 709 P2d 639, 42 St. Rep. 1735 (1985).

Relinquishment of Corporate Assets by Directors Holding Fifty Percent of Stock: By a 2-to-1 vote, directors holding 50% of the stock of corporation being dissolved outvoted the third director, who held the other 50%, and voted to relinquish the corporation's ownership of stained glass windows. A law firm the corporation designated to hold and disburse the proceeds from the sale of corporate assets filed an interpleader action to determine who should receive what funds. The court properly found that if relinquishment of the windows had been put to a shareholder vote, the vote would have been equal and concluded that the disposal was not in the regular course of business and violated 35-1-809 (now repealed). The court awarded the dissenting director-shareholder damages against the other two equal to one-half the value the court placed on the windows. Schulz, Davis & Warren v. Marinkovich, 203 M 12, 661 P2d 5, 40 St. Rep. 262 (1983).

Failure to Pay Purchase Price on Time — Lost Income to Be Paid: Failure to pay the purchase price for stock in the time required deprives a corporation of the purchase price, and as a result the corporation suffers a loss equivalent to the income it would have earned, which must be paid by the delinquent stock purchaser. Ski Roundtop, Inc. v. Hall, 202 M 260, 658 P2d 1071, 40 St. Rep. 74 (1983).

Stock Issue Sales — Duty to Minority Stockholders — Business Judgment Rule: When director and majority stockholder at time of suit became such during the life of the corporation by subscribing to stock issues when other stockholders did not, there was no breach of fiduciary duty by him to minority stockholders because his subscriptions saved the corporation; they were available to all stockholders with a detailed prospectus setting forth pertinent matter; and although the issues may not have been a perfect solution to corporate problems, they were acceptable under the "business judgment rule". Ski Roundtop, Inc. v. Hall, 202 M 260, 658 P2d 1071, 40 St. Rep. 74 (1983), followed in Daniels v. Thomas, Dean & Hoskins, Inc., 246 M 125, 804 P2d 359, 47 St. Rep. 2293 (1990).

Option to Purchase: Section 15-901, R.C.M. 1947 (now repealed), did not restrict powers of corporation's officers and directors in prosecuting corporation's business with respect to transactions incident to its ordinary activities and calculated to further its continuance in business. When a mining corporation could not meet the terms of an option to purchase mining claims within the few days remaining, its officers acted as ordinarily prudent businessmen carrying on their business affairs, without evasion of statute, by conveying the claims to an individual who paid off the option and gave the corporation an option to purchase the claims from him on a later date. N. Min. Corp. v. Trunz, 124 F2d 14 (9th Cir. 1941).

Allegation That Contract Entered Into by Lawful Authority — Sufficiency: Complaint, in an action for breach of a contract of sale of corporate mining property which also included a sale of its stock, alleging that the contract was entered into by the defendant corporation by lawful authority under section 15-901, R.C.M. 1947 (now repealed), was sufficient at least so far as its property was concerned, irrespective of whether the sale of the stock could be enforced, and therefore a general demurrer to the complaint did not lie. Smith v. Jack Pot Min. Co., 109 M 445, 97 P2d 368 (1939).

Gifts Ultra Vires: Corporations have no power to make gifts of their property; hence when the directors of a corporation, after purporting to convey its property to another corporation, executed without consideration a deed of trust to a third party covering the same property and the capital stock of the second company received therefor, the transaction was void not only under section 15-901, R.C.M. 1947 (now repealed), but as ultra vires the corporation. Hanrahan v. Andersen, 108 M 218, 90 P2d 494 (1939).

Without Essential Compliance, Conveyance a Nullity: It was essential to comply with section 15-901, R.C.M. 1947 (now repealed), as to holding special stockholders' meetings to consider selling or otherwise disposing of the whole or any part of a corporation's property, and the conveyance was a nullity when two of such meetings were held on an 11 and 5 days' notice irrespective of the fact that the corporation may thereafter have maintained an office and transacted business or had some property remaining. Hanrahan v. Andersen, 108 M 218, 90 P2d 494 (1939), distinguished in N. Min. Corp. v. Trunz, 124 F2d 14 (9th Cir. 1941).

When Neither Directors Nor Stockholders Have Right to Sell Property Against Stockholder's Dissent: When corporation was solvent and prosperous and well able to achieve object of its creation, neither directors nor stockholders would have right to sell corporation property against dissent of stockholder unless authority was granted by statute; in instant case, proposition for transfer of corporate property for period of years for development purposes was held too vague to form basis of contract against dissent of stockholder. Schwartz v. Inspiration Gold Min. Co., 15 F. Supp. 1030 (D.C. Mont. 1936).

Mortgage of Corporate Property: Under section 15-901, R.C.M. 1947 (now repealed), a corporation had power to mortgage all its property either by a two-thirds vote of its stockholders at a meeting called for that purpose or by adopting a bylaw empowering its board of directors to do so; hence when the complaint in an action to foreclose a corporate mortgage and trust deed alleged that the corporation had, "pursuant to lawful authority and corporate action of its stockholders and board of directors", etc., executed such deed, the pleading was sufficient to show authority in the corporation to mortgage its property. Thomson v. Nygaard, 98 M 529, 41 P2d 1 (1935).

Transfer of Business to President: The finding that a corporation which claimed to have transferred its business to its president had ceased to do business and was therefore not taxable was held unwarranted under the evidence (sections 15-901 through 15-911, R.C.M. 1947 (now repealed), and 72-20-201 and 72-20-204, MCA) (now repealed). Rasmusson v. Eddy's Steam Bakery, 57 F2d 27 (9th Cir. 1932).

Amount of Capital Stock: There being no statutory provision as to the amount of capital stock of a corporation that must be subscribed before the corporation can do business, the general rule applies that all of such stock must be subscribed before the corporation can recover on a stock subscription. Enterprise Sheet Metal Works v. Schendel, 55 M 42, 173 P 1059 (1918).

Estoppel: A stockholder in a reservoir company, a corporation organized for profit with power to sell its assets upon a proper vote, who, upon a sale having been made, took no timely steps to assail its legality nor brought suit until after the lapse of 5 years was estopped by his delay under sections 15-912 and 15-913, R.C.M. 1947 (now repealed), from questioning the proceedings leading to the sale. Canyon Creek Irrigation District v. Martin, 52 M 339, 159 P 418 (1916).

Mining Corporation: If mining corporations may consolidate in any manner and upon any terms without restriction, they may proceed by conveying all their property to a corporation organized for that purpose or by the purchase by one of the companies of stock of the others in whole or in part. MacGinniss v. Boston & Mont. Consol. Copper & Silver Min. Co., 29 M 428, 75 P 89 (1904).

DISSOLUTION AND LIQUIDATION

Plaintiff's Ability to Maintain Action Against Defunct Corporation: In an asbestos contamination case, 47 plaintiffs sued 53 defendants in Cascade County, including one defendant, Robinson Insulation Company (Robinson), that was a defunct corporation. Another defendant, Atlantic Richfield Company (Atlantic) moved for a change of venue to Flathead County, contending that as a defunct corporation, Robinson did not reside in Cascade County at the commencement of the action and had been improperly joined so that venue could be maintained in Cascade County. However, Robinson's status as a defunct corporation did not mandate a change of venue. The corporate survival statutes, 35-1-935 and 35-1-937 (now both repealed), maintained the status quo concerning corporate rights and responsibilities before and after dissolution, including actions against defunct corporations. Atlantic's argument that application of this interpretation to Robinson would require impermissible retroactive application of the corporate survival statutes failed because Robinson acquired no vested right to be free from liability before the running of the statute of repose in former 35-1-930 (repealed 1991). Denial of Atlantic's motion to change venue was affirmed. Allen v. Atl. Richfield Co., 2005 MT 281, 329 M 230, 124 P3d 132 (2005), following Williams v. Hartford Accident & Indem. Co., 174 M 387, 571 P2d 90 (1977).

Attachment of Conditions Not Necessarily Indicative of Oppression — Possible Future Oppression Insufficient to Warrant Liquidation: The District Court found that a corporate director's negotiation tactics were oppressive and threatening and that he unfairly used his position to influence negotiations sufficient to trigger 35-1-938 (now repealed). His offer, however, was never accepted. Reversing, the Supreme Court found that the director's actions were more consistent with negotiation tactics than oppressive actions. Merely because he attached conditions to his offer did not necessarily mean his actions were oppressive. If the director had carried through on his threats, a cause of action for oppression may have arisen; however, the mere possibility of future oppressive actions is not sufficient to invoke the liquidation provisions of 35-1-938 (now repealed). Citing Alaska Plastics, Inc. v. Coppock, 621 P2d 270 (Alaska 1980), the court found no authority that would allow specific performance on the basis of an unaccepted offer, particularly on terms totally different from those offered. Such a rule would place a court in an impossible position of making and enforcing contracts between unwilling parties. Daniels v. Thomas, Dean & Hoskins, Inc., 246 M 125, 804 P2d 359, 47 St. Rep. 2293 (1990).

Action Based on Misapplication or Waste as Derivative in Nature: An action by a shareholder to liquidate a corporation under 35-1-921(1)(a)(iv) (now repealed) because corporate assets are being misapplied or wasted is based on an injury to the corporation rather than an injury to an individual shareholder and may therefore be maintained only as a derivative shareholder action. Sax v. World Wide Press, Inc., 809 F2d 610 (1987).

Personal Injury as Prerequisite to Maintaining Direct Shareholder Action: A direct shareholder action to liquidate a corporation is permitted by 35-1-921(1)(a)(ii) (now repealed), but the shareholder must allege and prove that the acts of the directors alleged to be illegal, oppressive, or fraudulent injured him personally rather than the corporation. Absent such an allegation of personal injury, the suit may be maintained only as a derivative action. Sax v. World Wide Press, Inc., 809 F2d 610 (1987).

Receivership Denied — Sale of Stock to Corporation Ordered — Value of Stock: Brother and sister, each owning 75 shares of family ranch incorporated into 1,000 shares, sued brother (owning 849 shares) and mother (owning 1 share) who lived on the ranch for receivership and sale of the ranch. Plaintiff brother settled for $20,000 and 20 acres of the ranch land in return for his shares. The court ordered sister to settle on the same terms. On remand for valuation of the corporation and its land, the lower court computed the net worth of the corporation, found the sister's shares worth $49,326.38, and ordered her to transfer her shares to the corporation for $9,326.38 and 20 acres of the ranch that would be worth $40,000. This was also overturned on appeal, the Supreme Court ordering that sister be paid $20,000 and 20 acres. Maddox v. Norman, 215 M 458, 697 P2d 1368, 42 St. Rep. 539 (1985).

Error to Order Liquidation of Family Corporation in Marital Property Disposition Decree: The court agreed with husband's contention that the trial court erred in ordering contingent liquidation of a family corporation for the enforcement and security of the wife's property division if the husband failed to make installment payments as ordered. The corporation was not a party, and thus the court had no jurisdiction over its property. Section 35-1-921 (now repealed) does not include dissolution of a corporation for nonpayment of marital obligations by one of the corporation's stockholders. However, the court remanded the case, since the trial court does have power to secure a marital settlement by granting a security interest in stock or such further security arrangements necessary to enforce the decree. In re Marriage of Buxbaum, 214 M 1, 692 P2d 411, 41 St. Rep. 2243 (1984).

Equitable Order for Purchase of Shares in Dissolution Proceeding — Improper Valuation of Shares: Where the District Court properly invoked its equitable powers in a dissolution proceeding to order the plaintiff to sell and the defendants to buy the plaintiff's 75 outstanding shares, the District Court erred in its valuation of those shares by not establishing the net value of the corporation, by rejecting consideration of an earlier offer to purchase shares (which lapsed by a failure to obtain financing), and by failing to establish the value of 20 acres of land ordered exchanged for the shares. Without considering these facts, the court could not properly value the shares of the plaintiff. Maddox v. Norman, 206 M 1, 669 P2d 230, 40 St. Rep. 1463 (1983), distinguished in Daniels v. Thomas, Dean & Hoskins, Inc., 246 M 125, 804 P2d 359, 47 St. Rep. 2293 (1990).

Equitable Power of District Court to Order Stock Sale in Place of Dissolution: Where the plaintiff petitioned the District Court to appoint a receiver and dissolve a family ranching corporation in which she held 75 out of 1,000 outstanding shares, the District Court did not err in refusing to appoint the receiver and instead ordering the plaintiff to sell and the defendants to buy her corporate shares. Past decisions of the Montana Supreme Court show that the courts may use equitable powers in resolving disputes between shareholders, and decisions from other jurisdictions have recognized and approved the fashioning of equitable remedies less drastic than dissolution in cases where dissolution is not warranted. Because the facts show dissolution was not warranted in this case, the District Court's order was an appropriate equitable remedy. Maddox v. Norman, 206 M 1, 669 P2d 230, 40 St. Rep. 1463 (1983), distinguished in Daniels v. Thomas, Dean & Hoskins, Inc., 246 M 125, 804 P2d 359, 47 St. Rep. 2293 (1990).

Liquidation Denied Owner of 13.33 Percent of Ranch — Desire for Quick Money Inadequate Cause for Liquidation: Where the plaintiff petitioned for the appointment of a receiver and liquidation of a ranching corporation in which she owned 75 of 1,000 outstanding shares, the District Court did not err in refusing to appoint a receiver, since the evidence showed the corporation was solvent, that other shareholders who had worked to improve the ranch would be harmed by liquidation, and that the plaintiff only wanted money out of the corporation quickly in exchange for her shares. Because the comments to 35-1-921 (now repealed) indicated that the power to appoint a receiver is discretionary and that such a remedy is an extraordinary step reserved for cases in which no other remedy will provide an adequate solution, the District Court's decision will not be disturbed as it was not clearly erroneous under the circumstances. Maddox v. Norman, 206 M 1, 669 P2d 230, 40 St. Rep. 1463 (1983).

Payment of Director's Wage Claims by Directors: Stockholders adopted a plan of liquidation and dissolution which provided that after the sale of assets, the corporation would not engage in any business and the directors and officers would continue in office solely to wind up the corporate affairs. Almost 10 months later, the directors voted to grant a director's claim for wages not provided for prior to the dissolution. The liquidating directors improperly granted the claims, and the Supreme Court ordered disbursal of the corporate funds without regard to any such wage claims or attorney fees based on them. The grant of the wage claim was especially improper where, by a 2-to-1 vote, two directors holding 50% of the stock granted the wage claim of one of them and denied the similar wage claims of persons related to the third director, who held the other 50% of the stock. Schulz, Davis & Warren v. Marinkovich, 203 M 12, 661 P2d 5, 40 St. Rep. 262 (1983).

Oppression — Case-by-Case Analysis — Sophistication of Parties: Oppression, being a visible departure from the standards of fair dealing, must be examined on a case-by-case basis. The District Court's determination that defendants committed no oppression is supported by credible evidence, including the fact that approximately 20 businessmen with extensive financial and investment backgrounds were involved, and thus the District Court's determination will not be overturned. Ski Roundtop, Inc. v. Hall, 202 M 260, 658 P2d 1071, 40 St. Rep. 74 (1983).

Additional Requirements for Deadlock — Equitable Grounds: In addition to the statutory requirements for deadlock, there is a further burden of proving equitable grounds for dissolution of a corporation. The trial court should consider the seriousness of the deadlock, whether the deadlock prevents a profitable operation of the corporation, and the benefit or detriment to the shareholders and the public if the corporation is dissolved. Fox v. 7L Bar Ranch Co., 198 M 201, 645 P2d 929, 39 St. Rep. 862 (1982).

Corporate Liquidation — Records of Related Family Corporations Relevant: In an action for liquidation of a corporation because of oppression and shareholder deadlock, corporate minutes and financial statements of two separate but closely related family corporations were relevant and therefore admissible. Fox v. 7L Bar Ranch Co., 198 M 201, 645 P2d 929, 39 St. Rep. 862 (1982).

Oppression Through Attempt to "Squeeze Out" a Shareholder: Although a corporation was in a position to declare dividends, the board of directors refused to so declare in an attempt to "squeeze out" the plaintiff shareholder. This, in addition to many other acts, constituted evidence of oppressive conduct. Oppression is to be defined in terms of the reasonable expectations of minority shareholders in light of the particular circumstances of each case. Fox v. 7L Bar Ranch Co., 198 M 201, 645 P2d 929, 39 St. Rep. 862 (1982).

Probate Distribution — Not Res Judicata for Corporate Liquidation: In a previous probate proceeding, the plaintiff, as one of several legatees of a corporation, moved to have the corporation liquidated and distributed in cash or assets. The District Court, in an interpretation of the will, denied the motion and ordered distribution to be made "in kind". This ruling was not res judicata in a subsequent action for liquidation of the corporation based on oppression and shareholder deadlock. Although seeking the same relief, the two actions rested on a different set of facts. Fox v. 7L Bar Ranch Co., 198 M 201, 645 P2d 929, 39 St. Rep. 862 (1982).

Oppression in Closely Held Family Corporation — Brother Overreaching as to Deceased Brother's Wife — Heir: Plaintiff's husband and defendant were brothers and partners in a ranching operation, although each owned the land individually. Plaintiff's husband died and defendant was named executor. A corporation was formed to operate the ranch on May 1, 1973. Both parties transferred all assets to the corporation. Defendant's family got 364 more shares than plaintiff, and defendant was named president of the corporation. Restrictions were placed on the valuation and transfer of stock. On May 29, 1975, plaintiff consulted her own attorney and for the first time fully realized her position. All corporate votes became deadlocked. On April 29, 1977, plaintiff filed suit to dissolve the corporation, alleging fraud and oppressive conduct by defendant and mistake at the formation. The court found that defendant occupied a position of trust and confidence in relation to plaintiff. He was executor of her husband's estate and partner to her husband at the date of death; that status imposed on defendant the duties of a trustee. Plaintiff sought liquidation of the corporation on the grounds of oppression in that defendant had fixed the stock valuation at which plaintiff could sell and defeated plaintiff's motion to create an office giving plaintiff power equal to defendant. Oppression may be more easily found in a closely held family corporation than in a larger public corporation. The trial court properly allowed corporate liquidation if the parties are unable to agree upon property division and transfer. Skierka v. Skierka Bros., Inc., 192 M 505, 629 P2d 214, 38 St. Rep. 754 (1981).

Suits by Stockholders: Individuals cannot maintain an action for a corporation on the theory that they are the possible successors to the corporation's title upon the expiration of the corporate life. Malcom v. Stondall Land & Inv. Co., 129 M 142, 284 P2d 258 (1955).

Liabilities Accrued Before Dissolution: Section 15-1202, R.C.M. 1947 (now repealed), saves the remedy against a domestic corporation for liabilities accrued before dissolution. Mont. Valley Land Co. v. Bestul, 126 M 426, 253 P2d 325 (1953).

Ownership of Stock — Determination: In action to determine ownership of corporate stock of dissolved corporation, letter from one of organizers showing original distribution of stock was admissible in evidence. Henningsen v. Stromberg, 124 M 185, 221 P2d 438 (1950).

Action in Tort Against Statutory Trustees Triable to Jury: An action by a stockholder in a dissolved corporation against its statutory trustees in their individual capacity to recover damages for breach of obligation to wind up affairs, engaging in business in conjunction with a bank causing trust estate to become insolvent, was one in tort and as such triable to a jury, and not one in equity as for an accounting, triable without a jury, and necessity of introduction of books and records no obstacle. State ex rel. Word v. District Court, 112 M 458, 117 P2d 494 (1941).

Trustees Engaging in Business Instead of Winding Up Affairs — Stockholder's Right of Action: A stockholder of a dissolved corporation may maintain in his own behalf an action in tort for damages against its former directors as trustees, who instead of winding up corporate affairs as required by section 15-1102, R.C.M. 1947 (now repealed), engaged with a bank in a business enterprise with an alleged fraudulent design that brought on insolvency and depreciation of the corporation's stocks and bonds. Other stockholders and creditors need not be joined. Word v. Union Bank & Trust Co., 111 M 279, 107 P2d 1083 (1940).

Claim for Personal Services Rendered Prior to Dissolution: Court's decree, finding all allegations of the petition setting forth, inter alia, as required by section 15-1109, R.C.M. 1947 (now repealed), that all claims and demands against the corporation had been satisfied and discharged, were true, was not res judicata as to a claim thereafter made for personal services rendered prior to dissolution, in view of the provision of section 15-1202, R.C.M. 1947 (now repealed), that the dissolution shall not take away or impair any remedy given against the corporation for any liability previously incurred. In re Courtney Bros., Inc., 110 M 289, 100 P2d 471 (1940).

Purpose to Safeguard Rights of Creditors: The chief purpose of the provision in section 15-1102, R.C.M. 1947 (now repealed), that directors of a dissolved corporation, acting as trustees of the creditors and stockholders thereof, shall settle corporate affairs and apply proceeds of liquidation to payment of debts, etc., is to safeguard the rights of creditors against attempts by the directors to cut off their claims by secret or summary proceedings and to dispose of corporate assets by an unauthorized conveyance. In re Courtney Bros., Inc., 110 M 289, 100 P2d 471 (1940).

Creditor's Remedy — Petition in Probate: A creditor of a dissolved corporation, who claimed that its directors had failed in their duty as trustees of its creditors and stockholders, filed a document denominated "Petition and Affidavit for Order to Show Cause", which prayed that the court require the directors to show cause why they should not proceed forthwith to the liquidation of their trust as such trustees. It was held on application for a Writ of Supervisory Control to review the court's action in dismissing the proceeding, that relator's remedy under section 15-1102, R.C.M. 1947 (now repealed), is by petition in probate for appointment of the directors or some others as trustees to proceed under the statute. State ex rel. Stoddard v. District Court, 108 M 51, 88 P2d 34 (1939).

Applies Although No Assets: While there cannot be a trust without there being trust property in existence, section 15-1102, R.C.M. 1947 (now repealed), making the directors of a dissolved bank "trustees" with power to sue and be sued in behalf of the corporation and to settle and liquidate its affairs, applies even though there be no assets to be administered. Fitzpatrick v. Stevenson, 104 M 439, 67 P2d 310 (1937).

Failure to Allege "Other Persons Not Appointed": The complaint in an action against the trustees of a dissolved state bank to recover damages from the bank for breach of an option contract to purchase land held by the bank was not insufficient for failure to allege that other persons were not appointed in place of the directors of the bank to act as trustees to settle and liquidate its affairs, when dissolution was voluntary and not by judicial proceedings. Fitzpatrick v. Stevenson, 104 M 439, 67 P2d 310 (1937).

Right of Action Unimpaired By Dissolution: Under section 15-1202, R.C.M. 1947 (now repealed), dissolution of a corporation does not take away or impair a remedy given against it; hence the plaintiff in an action against the statutory trustees of a dissolved bank to fasten liability upon the bank for breach of contract was not deprived by the dissolution of his right to institute the action for the purpose of reducing his claim to judgment, taking his chances to realize thereon. Fitzpatrick v. Stevenson, 104 M 439, 67 P2d 310 (1937).

Voluntary Dissolution — Preference of Creditors: A bank going into voluntary liquidation may not prefer one creditor to another; and if its assets be distributed to others in preference to one who has a claim against it, he has a right of action. The complaint is not insufficient because it shows affirmatively that the corporation has no assets. Fitzpatrick v. Stevenson, 104 M 439, 67 P2d 310 (1937).

Appeal From Order Appointing Receiver: One of five statutory trustees in charge of the affairs of a dissolved corporation may not prosecute an appeal to the Supreme Court from an order appointing a receiver for the corporation against the wishes of his cotrustees, irrespective of whether unit or majority rule of action controls under certain statutes. Union Bank & Trust Co. of Helena v. Penwell, 99 M 255, 42 P2d 457 (1935).

Property of Corporation Subject to Attachment or Levy of Execution: It is the public policy of this state that the property of a dissolved corporation, other than a banking corporation, while being administered by its directors as trustee for the creditors and stockholders under section 15-1102, R.C.M. 1947 (now repealed), is subject to attachment or levy of execution in the same manner and in the same cases where those writs would run against the property of the corporation itself. Mieyr v. Fed. Sur. Co. of Davenport, Iowa, 97 M 503, 34 P2d 982 (1934), affirmed in Clark v. Williard, 294 US 211 (1935).

Duties of Statutory Trustees: Under section 15-1102, R.C.M. 1947 (now repealed), statutory trustees of a defunct corporation were required to settle and liquidate its affairs. In an action of debt against such trustees, the facts disclose that defendants had not completed their duties as trustees and that a demurrer to their plea in bar was properly sustained. Gilna v. Barker, 78 M 357, 254 P 174 (1927), explained in Clark v. Williard, 292 US 112 (1934).

Expiration of Corporation's Term of Existence — Receivership Unnecessary: The dissolution of a corporation by the expiration of its term of existence does not authorize a court to take its property from trustees, not charged with wrongdoing, and appoint a receiver. Merges v. Altenbrand, 45 M 355, 123 P 21 (1912).

Receivership Unnecessary: A receiver should not be appointed to take charge of a building and loan company, when the directors are acting as trustees to wind up its affairs after its charter has expired, unless it appears that the party complaining has been or is about to be injured by unwarranted procedure on the part of such trustees. Ferrell v. Evans, 25 M 444, 65 P 714 (1901), explained in Clark v. Williard, 292 US 112 (1934).

FOREIGN CORPORATIONS

Certificate of Authority Not Required to Execute Foreclosure: When defendants defaulted on a mortgage loan, the bank attempted to collect the loan through foreclosure. Defendants alleged that as a foreign corporation, the bank was required to obtain a certificate of authority before conducting business in the state. On appeal, the Supreme Court affirmed the District Court ruling, holding that a certificate of authority was not needed to execute a foreclosure, regardless of whether the bank was a foreign corporation. Farm Credit Bank of Spokane v. Fulbright, 274 M 261, 907 P2d 956, 52 St. Rep. 1219 (1995).

Suit Filed by Unauthorized Foreign Corporation Tolls Statute of Limitations: A foreign corporation with an expired certificate of authority to do business in Montana filed suit for legal malpractice. The suit was dismissed due to the lapsed certificate. When the corporation refiled the lawsuit, defendants argued that the action was barred by the statute of limitations. Section 35-1-1004 (now repealed) merely suspends rather than bars further legal proceedings until a certificate is obtained. The Supreme Court held that the corporation could file a lawsuit even though its certificate was expired and the filing had tolled the statute of limitations. Watson & Associates, Inc. v. Green, MacDonald, & Kirscher, 253 M 291, 833 P2d 199, 49 St. Rep. 550 (1992).

Enforcement of Contract: When foreign corporation for 5 years conducted business without qualifying, paid no corporation license tax, and filed no annual report, the foreign corporation could not enforce a contract made during those 5 years. Later compliance is not sufficient to remove the bar of the statute. Hutterian Brethren of Wolf Creek v. Haas, 116 F. Supp. 37 (D.C. Mont. 1953). See also Mktg. Specialists, Inc. v. Serv. Mktg. of Mont., Inc., 214 M 377, 693 P2d 540, 42 St. Rep. 32 (1985).

Foreign Corporation Transacting Business Without Certificate — No Authority to Bring Suit: In an action by an out-of-state corporation against Montana parties for interference with a contract, the foreign corporation was without authority to bring suit in Montana because it was a foreign corporation transacting business in the state without a certificate of authority. The corporation received a certificate more than 10 years ago, but it was suspended in 1978. Another company incorporated by the same principals presently holds a valid certificate of authority in this state, but the record contains no evidence that the two businesses have been merged. If the second foreign corporation is the real party in interest, it should have brought suit in its own name. Under 30-13-216, a corporation acting under an assumed name has no right of access to state courts. Mktg. Specialists, Inc. v. Serv. Mktg. of Mont., Inc., 214 M 377, 693 P2d 540, 42 St. Rep. 32 (1985).

Corporation Not Authorized to Do Business in Montana — Counterclaim Allowed:

A nonresident corporate defendant that does not have a certificate of authority to do business in Montana is entitled to assert a compulsory counterclaim in an action filed against it. Doll v. Major Muffler Centers, Inc., 208 M 401, 687 P2d 48, 41 St. Rep. 429 (1984).

The plaintiff argued that the defendant corporation cannot assert its counterclaim because it is not authorized to do business in Montana. The defendant, however, is merely defending the action brought against it by the plaintiff, which it has a right to do under 35-1-1004 (now repealed). The counterclaim is just one aspect of the defense which the defendant is entitled to raise and can therefore be brought. Wortman v. Griff, 200 M 528, 651 P2d 998, 39 St. Rep. 1916 (1982).

Foreign Corporation Improperly Registered — May Defend Suit: The records of the Secretary of State showed that Buttrey Food, Inc. is an Illinois corporation. In the defense of a suit, Buttrey Food designated itself as a New York corporation. Appellant contends that because Buttrey neglected to notify the Secretary of State of the corporate change and lacked a valid certificate of authority to transact business in this state, a default judgment should have been entered against Buttrey. Section 35-1-1004 (now repealed) prohibits a foreign corporation who has not obtained a certificate of authority from maintaining a suit in this store. Buttrey however is not seeking to maintain a suit; it is merely defending an action which it is permitted to do even if improperly registered. Duran v. Buttrey Food, Inc., 189 M 381, 616 P2d 327 (1980).

Venue: The Montana Business Corporation Act does not grant a foreign corporation residency in a particular county of this state for venue purposes. Foley v. Gen. Motors Corp., 159 M 469, 499 P2d 774 (1972).

Foreign Corporation No Longer Admitted: Insurance company no longer authorized to transact business in Montana was able to maintain suit in equity enjoining its conservation agent, whose duties were to service present policyholders, from using list of policyholders to solicit business for another insurance company who subsequently employed him as sales manager. Empire Life Ins. Co. of Am. v. Sorenson, 347 F. Supp. 987 (D.C. Mont. 1972).

License Tax Delinquency: Neither foreign corporation which created and assigned accounts receivable before complying with laws of state nor foreign corporation to which accounts receivable were assigned had right of enforcement until assignor paid license taxes under former statute providing that no contract of a foreign corporation was enforceable during the period of delinquency in payment of its fees and licenses, and although a subsequent compliance with statute would remove bar of nonenforceability, removal would not relate back to date of original delinquency and would not bar superior rights of others that accrued during period of delinquency. Manufacturers Acceptance Corp. v. Krsul, 151 M 28, 438 P2d 667 (1968).

Furnishing Material for Construction Project: The activities of a foreign corporation engaged in constructing a motel and a foreign corporation furnishing material for the project were not incidental to interstate commerce, and mechanics' liens (now construction liens) were unenforceable where failure of principal contractor and materialman to qualify to do business in Montana in violation of section 15-1701, R.C.M. 1947 (now repealed), made principal contract unenforceable. Greene Plumbing & Heating Co. v. Morris, 144 M 234, 395 P2d 252 (1964).

Interstate Commerce: The activities of a foreign corporation engaged in constructing a motel and a foreign corporation furnishing material for the project were not incidental to interstate commerce, and mechanics' liens (now construction liens) were unenforceable under section 15-1703, R.C.M. 1947 (now repealed), when failure of principal contractor and materialman to qualify to do business in Montana in violation of section 15-1701, R.C.M. 1947 (now repealed), made principal contract unenforceable under section 15-1703, R.C.M. 1947 (now repealed). Greene Plumbing & Heating Co. v. Morris, 144 M 234, 395 P2d 252 (1964).

Citizenship of Qualifying Corporation: A U.S. District Court in Montana had jurisdiction of an action by a Montana resident against a joint venture composed of a New Jersey and an Arizona corporation, each qualified to do business in Montana under sections 15-1701 through 15-1713, R.C.M. 1947 (now repealed), since neither corporation became a citizen of Montana by qualifying to do business and consenting to be sued in Montana. Carson Constr. Co. v. Fuller-Webb Constr., 198 F. Supp. 464 (D.C. Mont. 1961).

Enforcement of Guaranties: A corporation engaged in financing mobile homes, who was not doing business in the state of Montana, could enforce guaranties of conditional sales contracts assigned to it by a mobile home dealer in Montana. Minnehoma Fin. Co. v. Van Oosten, 198 F. Supp. 200 (D.C. Mont. 1961).

Financing Mobile Homes — Business by Mail With Dealers Only — Not Doing Business: A corporation engaged in financing mobile homes was not doing business in the state of Montana since there was no evidence that it had any office, place of business, or resident agents or employees in Montana; it did not deal directly with any customers or purchasers, but solely with dealers; and this business was conducted by mail pursuant to an agreement reciting that it was made and entered into in Tulsa, Oklahoma. Minnehoma Fin. Co. v. Van Oosten, 198 F. Supp. 200 (D.C. Mont. 1961).

Interstate Commerce: Activities of a foreign corporation in Montana that are in interstate commerce are not subject to the provisions of section 15-1701, R.C.M. 1947 (now repealed). Minnehoma Fin. Co. v. Van Oosten, 198 F. Supp. 200 (D.C. Mont. 1961); Union Interchange, Inc. v. Parker, 138 M 348, 357 P2d 339 (1960).

Real Estate Transactions as Doing Business — Factual Determination: The determination whether plaintiff was doing business in Montana within the purview of section 15-1701, R.C.M. 1947 (now repealed), or was carrying on the business of a real estate broker within the purview of Title 37, ch. 51, was a question of law under 25-7-102 and 26-1-201. Union Interchange, Inc. v. Parker, 138 M 348, 357 P2d 339 (1960), explained in Minnehoma Fin. Co. v. Van Oosten, 198 F. Supp. 200 (D.C. Mont. 1961).

Effect of Suspension on Statute of Limitations: A statute of limitation against a foreign corporation is not tolled by the suspension of the corporation's right to do business within the state since a person with a claim against the corporation could get service of process that would support a personal judgment under section 93-3007, R.C.M. 1947 (now repealed), and under section 93-3011, R.C.M. 1947 (superseded by former Rule 4D, M.R.Civ.P., now superseded). Mont. Valley Land Co. v. Bestul, 126 M 426, 253 P2d 325 (1953).

Status of a Foreign Corporation: The fact that corporation does not comply with the laws of Montana and has ceased to do business does not prevent it from redeeming its property sold at delinquent tax sale. Stensvad v. Ottman, 123 M 158, 208 P2d 507 (1949).

Suit on Causes of Action Arising Outside Montana: A Minnesota corporation complying with section 15-1701, R.C.M. 1947 (now repealed), by filing certificate consenting to be sued in courts of Montana on causes of action arising in Montana did not thereby consent to be sued in Montana U.S. District Court by inhabitant of Illinois on cause of action arising in Minnesota so as to "waive" privilege in actions in which jurisdiction is based on diversity of citizenship of being sued only in district in which such corporation or plaintiff was a resident (prior to enactment of 28 U.S.C. § 1391 by act June 25, 1948, Ch. 646, 62 Stat. 869). N. Butte Min. Co. v. Tripp, 128 F2d 588 (9th Cir. 1942).

Attachment Before Foreign Liquidator Has Taken Possession of Property: In action by liquidator of foreign corporation attacking attachment of corporation's property in Montana to satisfy Montana judgment which was secured after dissolution of corporation in New York, decisions of Supreme Court of Montana construing local constitution and statutes, that local creditor of corporation may protect himself by attachment of corporation's property before foreign liquidator has taken possession of property, were binding on U.S. District Court. Van Schaick v. Parsons, 11 F. Supp. 654 (D.C. Mont. 1935).

Isolated Transactions by Foreign Corporation With Montana Corporation for Its Use Not Doing Business: Isolated transactions, whereby a foreign corporation sells goods manufactured in another state and shipped into Montana by such corporation for use or installation, does not constitute the doing of business in this state within the meaning of sections 15-1701 and 15-1703, R.C.M. 1947 (now repealed), prescribing the conditions under which foreign corporations may do business in the state. State ex rel. Am. Laundry Mach. Co. v. District Court, 98 M 278, 41 P2d 26 (1934); Gen. Fire Extinguisher Co. v. NW. Auto Supply Co., 65 M 371, 211 P 308 (1922), distinguished in Greene Plumbing & Heating Co. v. Morris, 144 M 234, 395 P2d 252 (1964).

Dissolution — Liabilities Not Extinguished: Under section 15-1202, R.C.M. 1947 (now repealed), declaring that dissolution of a domestic corporation did not take away or impair any remedy given against it for a liability previously incurred, and section 15-1709, R.C.M. 1947 (now repealed), providing that foreign corporations doing business in the state were subject to all the liabilities and restrictions imposed upon domestic corporations, and Art. XV, sec. 11, 1889 Mont. Const., saying that no foreign corporation shall enjoy any greater rights or privileges in the state than those created under its laws, an action against an Iowa surety company pending in a state court did not abate upon its dissolution in Iowa and a judgment obtained after decree of dissolution was valid. Mieyr v. Fed. Sur. Co. of Davenport, Iowa, 94 M 508, 23 P2d 959 (1933), reversed on other grounds in Clark v. Williard, 292 US 112 (1934).

Jurisdiction of District Court: District Court has jurisdiction under resident stockholders' bill against nonresident directors and foreign corporation, all of whose property, except books and office furniture, is within state, to conserve through receivership corporation's business and assets from looting by nonresident directors. Shoemaker v. Merrill Mortuaries, 2 F. Supp. 672 (D.C. Mont. 1933).

A foreign corporation has no actual existence outside the state of its creation and may do business in a sister state only by reason of comity between states; it is not a "person" within the privilege and immunity clause of the federal Constitution, and while it is considered a person or citizen within its equal protection clause, it cannot invoke that clause in another state until it has been duly admitted to do business therein. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Harmon, 89 M 1, 295 P 762 (1931).

Foreign Corporation: Admission in evidence of a certified copy of the articles of incorporation of a foreign company, though properly certified, was nevertheless erroneous in the absence of a certified copy of the laws of the state of its incorporation showing the mode of incorporation and the proper custodian of the original, when such company had never complied with the laws of nor was doing business in this state. Harvey E. Mack Co. v. Ryan, 80 M 524, 261 P 283 (1927).

Suit in Justice's Court: In the absence of statute giving foreign corporations a domestic residence, they remain nonresidents of the state and may under Title 25, ch. 31, part 2, be sued in a Justice's Court in any township of the state. Pue v. N. Pac. Ry., 78 M 40, 252 P 313 (1926).

Taxation — Corporations — "Franchise" — When Taxable: The franchise which was made taxable by Art. XII, sec. 1, 1889 Mont. Const., was not the bare right conferred upon corporations to do business in the state but that special privilege, not enjoyed by citizens generally, which represents something out of which the tax may be realized by forced sale, if necessary, as, for instance, the franchise of street railway, telephone and telegraph, gas, and water companies; hence the franchise of an express company, under which it enjoys no such special privilege, is not subject to taxation. Wells Fargo & Co. v. Harrington, 54 M 235, 169 P 463 (1917).

Single Contract or Purchase Not Doing Business: Making a single contract or purchase does not constitute doing business in this state within the meaning of sections 15-1701 and 15-1703, R.C.M. 1947 (now repealed). Dover Lumber Co. v. Whitcomb, 54 M 141, 168 P 947 (1917); Uihlein v. Caplice Commercial Co., 39 M 327, 102 P 564 (1909).

Revocation of Agent's Authority to Receive Service of Process: A foreign corporation may revoke the authority of its statutory agent to receive service even after a cause of action has accrued against it. United Missouri River Power Co. v. Wisconsin Bridge & Iron Co., 44 M 343, 119 P 796 (1911).

Foreign Corporation's Shipping of Beer Into State and Sale to Distributor Not Doing Business: The shipping of beer into the state by a foreign corporation and selling the same to distributing agent did not constitute a carrying on of business in the state within the meaning of section 15-1701, R.C.M. 1947 (now repealed), prescribing requirements for the doing of business in Montana by foreign corporations. Uihlein v. Caplice Commercial Co., 39 M 327, 102 P 564 (1909).

Right to Sue Before Filing Charter: When bringing an action based on a domestic contract, it is not necessary for a foreign corporation plaintiff to allege that it has complied with the statutory conditions precedent to doing business in the state when the petition shows facts making the transaction prima facie interstate commerce. Zion Co-op Mercantile Ass'n v. Mayo, 22 M 100, 55 P 915 (1899). See Am. Hand-Sewed Shoe Co. v. O'Rourke, 23 M 530, 59 P 910 (1900); Leggat v. Gerrick, 35 M 91, 88 P 788 (1907); Wilson v. Yegen Bros., 38 M 504, 100 P 613 (1909).

Section 15-1701, R.C.M. 1947 (now repealed), gave to foreign corporations the right to do business in this state upon their filing a copy of their charter and designating an agent and the filing of his consent to act, etc.; that right is a mere license to engage in the business in this state which its charter authorizes it to engage in and is based upon comity between the states. Helena Power Transmission Co. v. Spratt, 35 M 108, 88 P 773 (1907).

Right to Sue — Issue Raised by Answer: Since it is unnecessary for a foreign corporation plaintiff, bringing action on a domestic contract, to allege in its complaint that it complied with the statutes of the state entitling it to do business therein, the question of its noncompliance therewith can only be raised by answer. Am. Hand-Sewed Shoe Co. v. O'Rourke, 23 M 530, 59 P 910 (1900).

Suit Against Foreign Corporation Before Charter Filed: Noncompliance by a foreign corporation with a statute requiring the filing by such corporation of a copy of its charter or certificate with the county recorder, and subjecting it to a penalty and rendering void all its acts and contracts during the period it neglects to do so, is of no avail to a plaintiff seeking to enjoin an act of such corporation where the complaint fails to state a cause of action. Hershfield v. Rocky Mtn. Bell Tel. Co., 12 M 102, 29 P 883 (1892).

Right to Sue Before Filing Charter:

In an action which is brought to recover the value of goods sold in this state and in which the answer alleges and the reply admits that the plaintiff is a foreign corporation and at and before the time of the sale was engaged in the business of selling goods, wares, and merchandise in the state of Montana and that plaintiff had never complied with the laws of the state relating to foreign corporations, it is necessary for plaintiff to allege facts which show that the sale and delivery of the goods were of the nature of interstate commerce; and if he fails so to allege, a motion for judgment on the pleadings is properly granted. Kent & Stanley Co. v. Tuttle, 20 M 203, 50 P 559 (1897). See Zion Co-op Mercantile Ass'n v. Mayo, 22 M 100, 55 P 915 (1899).

The failure of a foreign corporation to file a copy of its charter or certificate of incorporation with the Secretary of the Territory and in the recorder's office of the county wherein it intended to transact business, under section 442, 5th Div. Comp. Stat. 1887, did not deprive it of the right to sue in the courts of the territory, since the cause of action was not based upon any act or contract of the corporation in the conduct of its business. Powder River Cattle Co. v. Comm'rs of Custer County, 9 M 145, 22 P 383 (1889).

ANNUAL REPORTS — CORPORATE RECORDS

Liability of Directors: The failure of a corporation to file its annual report no longer imposes the sanction of personal liability upon the directors of the corporation for all debts and judgments of the corporation; that sanction, found at section 15-811, R.C.M. 1947 (now repealed), was replaced by 35-1-1103 (now repealed), which imposed misdemeanor criminal sanctions against nonfiling corporations. Mont. Williams Double Diamond v. Royal Village, Inc., 186 M 359, 607 P2d 1120 (1980).

Verification: In an action by a creditor of a corporation to recover from its directors for failure to file the annual report of its financial condition, the requirement of section 15-811, R.C.M. 1947 (now repealed), that such report shall be verified by oath is met by verification on information and belief by one of the officers enumerated in the section, in the absence of a provision that it shall be made positively. Fisk Tire Co. v. Lanstrum, 96 M 279, 30 P2d 84 (1934).

Effect of Amendment and Repeal of Statute Declaring Liability of Directors for Default in Making Annual Report, Without Saving Clause: In view of 1-2-203, relating to effect of amendment of statutes, and section 15-1202, R.C.M. 1947 (now repealed), providing that amendment or repeal of a code section relating to corporations shall not impair or take away a remedy given against a corporation or its officers for a liability previously incurred, prior decisions, holding that amendment of section 15-811, R.C.M. 1947 (now repealed), "to read as follows" and repealing "all Acts and parts of Acts in conflict herewith" worked the extinction of the amended section "as though it had never existed" in the absence of a saving clause, were erroneous and are overruled. Cont. Supply Co. v. Abell, 95 M 148, 24 P2d 133 (1933). For decision overruled, see Cont. Oil Co. v. Mont. Concrete Co., 63 M 223, 207 P 116 (1922); First Nat'l Bank of Brockton v. Cosier, 66 M 352, 213 P 442 (1923); First Nat'l Bank of Plains v. Barto, 72 M 437, 233 P 963 (1925).

Nature of Liability: Judgments are debts; hence in providing in section 15-811, R.C.M. 1947 (now repealed), that corporate directors failing to make timely report of their corporation's financial condition shall be liable for the debts of and judgments against the corporation which may thereafter be incurred, the Legislature must by the use of the term "judgments" have intended judgments other than for debt, the latter being impliedly included in the word "debts". Cont. Supply Co. v. Abell, 95 M 148, 24 P2d 133 (1933).

Short Existence of Corporation Not Excuse for Not Filing: The fact that a corporation was in existence but a few months prior to the expiration of the year covering which it is required by section 15-811, R.C.M. 1947 (now repealed), to make a report on or before March 1 succeeding of its financial condition does not excuse it from making it. Cont. Supply Co. v. Abell, 95 M 148, 24 P2d 133 (1933).

Sufficiency of Complaint: When a creditor of a corporation seeks to recover a debt reduced to judgment from its directors for failure to file the annual report mentioned in section 15-811, R.C.M. 1947 (now repealed), a suit on the judgment is not required; in such a case the complaint must show liability on the defendants' part, not at the time the judgment was secured but at the time the debt was incurred and that it was incurred during the period of their default. Cont. Supply Co. v. Abell, 95 M 148, 24 P2d 133 (1933).

Venue of Action: The liability of directors of a domestic corporation created by section 15-811, R.C.M. 1947 (now repealed), under which they became answerable for its debts if they should fail to file within the proper time the annual financial statement provided for therein, whether such debts were created before or after such failure, is in the nature of a penalty and is not based upon contract, and therefore the venue of an action to recover on such liability is in the county where the cause of action or some part thereof arose. Nat'l Supply Co.-Midwest v. Abell, 87 M 555, 289 P 577 (1930).

Nature of Liability: The basis of an action to recover on the statutory liability of a director of a corporation for failure of the corporation to file the annual report of its financial condition required by section 15-811, R.C.M. 1947 (now repealed), is an antecedent debt due to plaintiff; the liability commences with and is dependent upon such debt at the time of the first default, is direct and primary and having once attached is not affected by the renewal of a note evidencing the debt, and is not renewed by subsequent defaults. Williams v. Hilger, 77 M 399, 251 P 524 (1926).

Cooperative Associations: The provisions of section 15-811, R.C.M. 1947 (now repealed), declaring that the directors and trustees of a corporation who fail to file with the County Clerk and Recorder of the county of its principal place of business an annual report of its condition shall jointly and severally be liable for all corporate debts or judgments then existing, or which may thereafter be incurred, until such report is made and filed, are applicable to cooperative associations organized for profit. Anderson v. Equity Cooperative Ass'n of Roy, 67 M 291, 215 P 802 (1923).

Liability for Failure to Make Annual Statement — Jury Trial: When the primary purpose of an action against a corporation was to recover on promissory notes aggregating the sum of $27,000 and to enforce liability of its directors as comakers and guarantors and for failure to file the annual statements required by statute, and the only equitable relief prayed for was the foreclosure of a mortgage given by one of the directors on two town lots as security for the notes, the answers of defendants consisting inter alia of denials and counterclaims which were put in issue by reply, the defendants were entitled to a trial by jury of the strictly legal issues presented by the pleadings, and denial of such jury trial was error. Benson-Stabeck Co. v. Farmers' Elevator Co., 66 M 395, 214 P 600 (1923), explained in Butler Bros. Dev. Co. v. Butler, 111 M 329, 108 P2d 1041 (1941).

Nature of Liability: The statutory liability of a director of a corporation for all its debts or judgments for failure to file its annual financial report is in the nature of a penalty imposed for omission to obey the mandate of the law and is not contractual in character. Butler v. Peters, 62 M 381, 205 P 247 (1922).

Attachment Improper to Recover Statutory Liability: The liability of a director for the debts of his corporation imposed by section 15-811, R.C.M. 1947 (now repealed), for failure of the corporation to file its annual report exhibiting its financial condition, etc., does not arise out of a contract, express or implied, for the direct payment of money, and a Writ of Attachment was improperly issued in an action by a creditor of a corporation against one of its directors to recover a debt owing to plaintiff by the corporation. Butler v. Peters, 62 M 381, 205 P 247 (1922).

Nature of Corporate Penalty: While the liability imposed by a statute requiring corporations to file an annual statement is often called penal, it is not so in the sense in which that term is commonly used. It is so only in the sense that it creates a liability which was not known at the common law and therefore must be construed strictly. Daily v. Marshall, 47 M 377, 133 P 681 (1913). See N. Pac. Ry. v. Crowell, 245 F 668 (D.C. N.J. 1917).

Denial of Proper Corporate Formation as a Defense: If an active director of a corporation that has been engaged in business, apparently in good faith, is sued and sought to be held for his failure as president and director of the corporation to file or have filed the annual report of the corporation, he cannot escape personal liability by denying the existence of the corporation on the ground that the forms of law had never been observed in perfecting its organization, whether he was properly chosen as director or not. Daily v. Marshall, 47 M 377, 133 P 681 (1913). See N. Pac. Ry. v. Crowell, 245 F 668 (D.C. N.J. 1917).

Before the 1909 amendment, section 15-811, R.C.M. 1947 (now repealed), did not seem to require that the annual report of a corporation be acknowledged in any event or that it be verified except when in the absence or inability of the president of the corporation to act the vice-president signs the report in his stead. Minneapolis Steel & Mach. Co. v. Thomas, 54 M 132, 168 P 40 (1917).

Time for Filing: When a corporation mailed its annual report to the County Clerk on January 16, but failed to enclose the filing fee of $1 and the Clerk received the report on January 17 or 19, retained it in his office and mailed the sender a bill for the fee, and on January 23 the fee was received and the Clerk thereupon endorsed the report as filed on the latter date, it was held in an action commenced to enforce the directors' individual liability that the evidence was insufficient to show that the report was not filed in time. Minneapolis Steel & Mach. Co. v. Thomas, 54 M 132, 168 P 40 (1917).

The right of action created in favor of a corporation's creditors to enforce the liability of a director, imposed upon him by reason of the failure of the company to file the annual report required by statute, survives his death and may be prosecuted against his estate. First Nat'l Bank of Missoula v. Cottonwood Land Co., 51 M 544, 154 P 582 (1916), explained in Anderson v. Wirkman, 67 M 176, 215 P 224 (1923). See N. Pac. Ry. v. Crowell, 245 F 668 (D.C. N.J. 1917).

Annual Report: The liability fixed by the statute requiring corporations to file an annual report is penal in its nature. Daily v. Marshall, 47 M 377, 133 P 681 (1913); Manhattan Trust Co. v. Davis, 23 M 273, 58 P 718 (1899); Giddings v. Holter, 19 M 263, 48 P 8 (1897); St. Sav. Bank of Butte City v. Johnson, 18 M 440, 45 P 662 (1896); Wethey v. Kemper, 17 M 491, 43 P 716 (1896); Elkhorn Trading Co. v. Tacoma Min. Co., 16 M 322, 40 P 606 (1895); Gaus v. Switzer, 9 M 408, 24 P 18 (1890).

Constitutionality: Section 15-811, R.C.M. 1947 (now repealed), requiring annual statement of corporations, before its amendment in 1909, was not unconstitutional as casting "liabilities and burdens upon domestic corporations from which foreign corporations are exempt", the penalty for failure to file the annual report being placed upon the officers and directors and not upon the corporation. Daily v. Marshall, 47 M 377, 133 P 681 (1913). See First Nat'l Bank of Missoula v. Cottonwood Land Co., 51 M 544, 154 P 582 (1916).

Fines: A fine, in the sense in which the term is used in the 1889 Montana Constitution prohibiting excessive fines, is a penalty exacted by the state for some criminal offense and has no application to the penalty imposed upon the directors of a corporation for neglect to file the annual statement required by statute. Daily v. Marshall, 47 M 377, 133 P 681 (1913).

Entries in Records as Evidence: It will be presumed that all entries made in the books of the corporation against the president and controlling stockholder were rightfully made, such books being therefore admissible against him and his personal representatives in an accounting against him arising out of the fraudulent purchase of certain shares of the corporation's stock from the executor of a deceased owner. Smith v. Moore, 199 F 689 (9th Cir. 1912).

Trustees' Liability — False Report: The trustees of a corporation who filed a report, wherein they failed to specify as a debt of the company its liability on a covenant of title, were not liable for a false report if, at the time the report was filed, the breach of the covenant was not known to them. Giddings v. Holter, 19 M 263, 48 P 8 (1897).

Sufficiency of Complaint: As statutes making the trustees of a corporation personally liable for company debts upon failure to file an annual report are penal in their nature and must be strictly construed, a complaint seeking to enforce such liability is insufficient if it fails to state the county in which the business of the company is conducted or that it was engaged in any business in any county. Wethey v. Kemper, 17 M 491, 43 P 716 (1896). See Whitefoot v. Nat'l Fraternity Bldg. & Loan Ass'n, 18 M 164, 44 P 514 (1896); Daily v. Marshall, 47 M 377, 133 P 681 (1913).

Trustees' Liability: If a corporation fails to file its annual report as required by statute, all the trustees of the company become jointly and severally liable for all its indebtedness existing at the time such report should have been filed. Elkhorn Trading Co. v. Tacoma Min. Co., 16 M 322, 40 P 606 (1895); Gaus v. Switzer, 9 M 408, 24 P 18 (1890).

Effect of Insolvency and Corporate Abeyance as a Defense: When, in an action against the trustees of a corporation to charge them with individual liability for failure to file an annual report, it was alleged in defense that before the time for filing such report the corporation was insolvent and had entirely abandoned its business, that all its property belonged to one of its trustees, having been delivered to him in satisfaction of an indebtedness, and that for a period of 2 months no officer or trustee had exercised any corporate act or function and that there was no intention to resume the business of said corporation, the acts set forth did not dissolve the corporation and constituted no defense to the action. Gaus v. Switzer, 9 M 408, 24 P 18 (1890). See Ames & Frost v. Heslet, 19 M 188, 47 P 805 (1897); N. Pac. Ry. v. Crowell, 245 F 668 (D.C. N.J. 1917).

In-Kind Distribution of Company Assets to Estate Not Error: Following a noncite opinion, Estate of James v. Hunt, 312 M 525N, 55 P3d 419N (2002), the personal representative petitioned for an in-kind distribution of the estate's real property held by trustees of a mining company. Prior to a hearing on the petition, the company board of directors purported to liquidate the estate's property interests by sale to one of its members and then moved to dismiss the petition for in-kind distribution as moot. The District Court voided the liquidation sale on equitable grounds and ordered the board of directors to immediately distribute the estate's fractional share of the now-defunct corporation's assets to the estate in kind. The board of directors appealed on grounds that the District Court erred in ordering the in-kind distribution. The Supreme Court disagreed. Under 35-1-935 (now repealed), in-kind distribution of some corporate assets after dissolution is allowed. Rights to the property that James deeded to the company devolved upon the estate when the sale offer was made, so the board of directors had no authority to sell it. Although the distribution was informal, all company shareholders received a distribution in kind, so the District Court did not err in voiding the sale and ordering the board of directors to deed real property to the state. However, the Supreme Court remanded the case for a determination of James's testamentary intent. In re Estate of James, 2004 MT 314, 324 Mont. 24, 102 P.3d 12.

Chapter Attorney General's Opinions

Eligibility of Subchapter S. Shareholder for Tuition Offset: A shareholder in a closed, or family, type Subchapter S. corporation is not eligible to claim tuition offset under 20-5-303 (now repealed) when the corporation is the taxpayer responsible for the district and county property taxes referred to in that section. 40 A.G. Op. 42 (1984).

Chapter Law Review Articles

Graceful Maneuvering: Corporate Avoidance of Liability Through Bankruptcy and Corporate Law, Heenan, 65 Mont. L. Rev. 99 (2004).

Part 1
General Provisions

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

35-14-125. Filing duty — secretary of state.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 568, L. 2023. Amendment effective May 18, 2023.

35-14-140. General definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 568, L. 2023. Amendment effective May 18, 2023.

35-14-141. Notices and other communications.

Compiler's Comments

2021 Amendment: Chapter 34 inserted (13) regarding when required notice need not be given. Amendment effective October 1, 2021.

Part 2
Incorporation

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part 3
Purposes and Powers

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part 4
Corporate Name

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

35-14-403. Registered name.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 568, L. 2023. Amendment effective May 18, 2023.

Part 5
Office and Agent

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part 6
Shares and Distributions

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part 7
Shareholders

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

35-14-701. Annual meeting.

Compiler's Comments

2021 Amendment: Chapter 34 in (2) inserted introductory clause allowing the board of directors to hold annual meetings by means of remote communication; and made minor changes in style. Amendment effective October 1, 2021.

35-14-702. Special meeting.

Compiler's Comments

2021 Amendment: Chapter 34 in (3) inserted introductory clause allowing the board of directors to hold special meetings by means of remote communication; and made minor changes in style. Amendment effective October 1, 2021.

35-14-705. Notice of meeting.

Compiler's Comments

2021 Amendment: Chapter 34 in (1) in middle of first sentence after "place" inserted "if any"; in (5) in first sentence in three places after "place" inserted "if any"; and made minor changes in style. Amendment effective October 1, 2021.

35-14-709. Remote participation — shareholder's meetings.

Compiler's Comments

2021 Amendment: Chapter 34 inserted (3) allowing the board of directors to determine that any meeting of shareholders must be held solely by means of remote communication. Amendment effective October 1, 2021.

35-14-720. Shareholders' list for meeting.

Compiler's Comments

2021 Amendment: Chapter 34 inserted (2)(a)(ii) concerning the availability of the shareholders' list on an electronic network; in (3) at beginning of first sentence inserted "If the meeting is to be held at a place" and inserted last sentence regarding availability of the shareholders' list when a meeting is held solely by means of remote communication; and made minor changes in style. Amendment effective October 1, 2021.

Part 8
Directors and Officers

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part Case Notes

Evidence Presented After Trial Insufficient to Maintain Oppression Claim: The plaintiff presented a signed affidavit suggesting that the defendant, an individual who was not a corporate director but who was appointed by the court to serve as a co-conservator of an estate that included several corporations, engaged in illegal conduct that could prove an oppression claim. However, the affidavit was presented to the District Court after trial as part of the posttrial attorney fee proceedings. Thus, the District Court did not err by determining that the plaintiff presented no evidence at trial that the defendant engaged in fraud and by concluding that an oppression claim could not be maintained against the defendant. McCann v. McCann, 2018 MT 207, 392 Mont. 385, 425 P.3d 682.

35-14-850. Definitions — indemnification and advance for expenses.

Compiler's Comments

2021 Amendment: Chapter 34 in definition of director in first sentence after "corporation's request as" substituted "a director, officer, manager, partner, trustee, employee, or agent of another entity or an employee benefit plan" for "a director of another entity or trustee of an employee benefit plan", in second sentence after "serving" deleted "as a trustee of", and in last sentence after "includes" inserted "unless the context requires otherwise"; in definition of officer in first sentence after "corporation's request as" substituted "a director, officer, manager, partner, trustee, employee, or agent of another entity or an employee benefit plan" for "an officer of another entity or trustee of an employee benefit plan", in second sentence after "serving" deleted "as a trustee of", and in last sentence after "includes" inserted "unless the context requires otherwise"; and made minor changes in style. Amendment effective October 1, 2021.

Part 9

Domestication and Conversion

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part 10

Amendment of Articles of Incorporation and Bylaws

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

35-14-1021. Bylaw increasing quorum or voting requirement for directors.

Compiler's Comments

2021 Amendment: Chapter 34 in (1) in introductory clause after "directors" inserted "or that requires a meeting of shareholders to be held at a place". Amendment effective October 1, 2021.

Part 11
Mergers and Share Exchanges

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part 12
Disposition of Assets

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part 13
Appraisal Rights

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

Part 14
Dissolution

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

35-14-1430. Grounds for judicial dissolution.

Case Notes

Oppression Claim Not Established When Record Mismanagement Already Corrected: The District Court found that although there had been record mismanagement concerning a decedent's corporations prior to the decedent's death, the defendants had corrected the shortcomings, and the evidence was insufficient to support an oppression claim. The Supreme Court held that the District Court did not err in finding that the plaintiff did not establish that a director or person in control of several corporations was proven to be acting in an illegal, oppressive, or fraudulent manner. McCann v. McCann, 2018 MT 207, 392 Mont. 385, 425 P.3d 682.

Part 15
Foreign Corporations

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

35-14-1505. Activities not constituting doing business.

Compiler's Comments

2021 Amendment: Chapter 34 in (4) at beginning of first sentence substituted "Except as provided in subsection (1), a foreign corporation is doing business in this state within the meaning of 35-14-1502(1)" for "A foreign corporation is transacting business within the meaning of subsection (1)". Amendment effective October 1, 2021.

Part 16
Records and Reports

Part Compiler's Comments

Effective Date: Section 274, Ch. 271, L. 2019, provided: "[This act] is effective June 1, 2020."

Applicability: Section 275, Ch. 271, L. 2019, provided: "A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] [June 1, 2020] is subject to [sections 1 through 221] [this chapter], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221] [this chapter]."

Saving Clause: Section 272, Ch. 271, L. 2019, provided: "(1) Except as to procedural provisions, [sections 1 through 221] [this chapter] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221] [June 1, 2020], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] [this chapter] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221] [this chapter], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221] [this chapter]."

Severability: Section 273, Ch. 271, L. 2019, was a severability clause.

Source: Model Business Corporation Act, 2016 Revision, promulgated by the American Bar Association.

CHAPTER 15
COOPERATIVE ASSOCIATIONS

Chapter Case Notes

Annual Reports: The provisions of section 15-811, R.C.M. 1947 (now repealed), declaring that the directors and trustees of a corporation who fail to file with the County Clerk and Recorder of the county of its principal place of business an annual report of its condition shall jointly and severally be liable for all corporate debts or judgments then existing or which may thereafter be incurred until such report is made and filed, were applicable to cooperative associations organized for profit. Anderson v. Equity Co-op Ass'n of Roy, 67 M 291, 215 P 802 (1923).

Part 1
General

35-15-103. Powers.

Compiler's Comments

2001 Amendment: Chapter 109 in (1) at end substituted "which may be of perpetual duration" for "not exceeding 40 years"; and made minor changes in style. Amendment effective October 1, 2001.

Saving Clause: Section 9, Ch. 109, L. 2001, was a saving clause.

Part 2
Formation — Articles of Incorporation — Bylaws

35-15-201. Incorporation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 277, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 271 in (2) at end substituted "35-14-202" for "35-1-216"; and made minor changes in style. Amendment effective June 1, 2020.

2001 Amendment — Coordination: Section 29(2), Ch. 396, L. 2001, a coordination instruction, provided that if Senate Bill No. 122 and Ch. 396 were both passed and approved, then the amendments to this section were those contained in sec. 29. Senate Bill No. 122 was passed and approved as Ch. 109, L. 2001. Section 29, Ch. 396, at beginning of (1) substituted "Whenever two or more persons desire to incorporate" for "Whenever any number of persons, not less than three or more than seven, may desire to become incorporated"; at end of (1)(a) substituted "cooperative association" for "corporation"; at beginning of first sentence of (3) after "statement" inserted "accompanied by the required filing fee, set and deposited in accordance with 2-15-405" and at end of last sentence deleted "for which he shall receive the fee of $20"; and made minor changes in style. Amendment effective July 1, 2001.

The amendments to this section made by sec. 2, Ch. 109, L. 2001, and sec. 25, Ch. 396, L. 2001, were replaced by sec. 29(2), Ch. 396, L. 2001, a coordination section.

Saving Clause: Section 9, Ch. 109, L. 2001, was a saving clause.

1991 Amendment: At end of (2) substituted "35-1-216" for "35-1-202(2)(a)(v)". Amendment effective January 1, 1992.

1987 Amendment: Inserted (2) relating to liability limitations of directors of cooperative associations.

1983 Amendment: In (1), after "under their hands" deleted ", duly acknowledged by a notary public, in the manner provided for the acknowledgment of deeds,".

Administrative Rules

ARM 44.5.118 Cooperative associations, agricultural associations, cooperative agricultural authority, and rural cooperative utilities fees.

Case Notes

Annual Reports: The provisions of section 15-811, R.C.M. 1947 (now repealed), declaring that the directors and trustees of a corporation who fail to file with the County Clerk and Recorder of the county of its principal place of business an annual report of its condition shall jointly and severally be liable for all corporate debts or judgments then existing or which may thereafter be incurred until such report is made and filed, were applicable to cooperative associations organized for profit. Anderson v. Equity Co-op Ass'n of Roy, 67 M 291, 215 P 802 (1923).

35-15-203. First meeting.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 277, L. 2023. Amendment effective October 1, 2023.

2001 Amendment: Chapter 109 near beginning substituted "the initial shares" for "10 or more shares"; and made minor changes in style. Amendment effective October 1, 2001.

Saving Clause: Section 9, Ch. 109, L. 2001, was a saving clause.

35-15-204. Issuance of certificate of organization — effect.

Compiler's Comments

2001 Amendment: Chapter 109 in (1) in first sentence substituted "the first meeting" for "their proceedings", at end of second sentence inserted "along with any required filing fee", and at end of third sentence deleted "making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state, for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located"; in (2) near beginning deleted "said certified copy" and inserted "the report of the first meeting and the statement of incorporation with the secretary of state and the issuance of the certificate provided for in subsection (1)"; and made minor changes in style. Amendment effective October 1, 2001.

Saving Clause: Section 9, Ch. 109, L. 2001, was a saving clause.

1983 Amendment: In first sentence of (1), after "which report shall be" changed "sworn to" to "executed".

35-15-205. Amendment of articles of incorporation — fee.

Compiler's Comments

2001 Amendment — Coordination: Section 29(2), Ch. 396, L. 2001, a coordination instruction, provided that if Senate Bill No. 122 and Ch. 396 were both passed and approved, then the amendments to this section were those contained in sec. 29. Senate Bill No. 122 was passed and approved as Ch. 109, L. 2001. Section 29, Ch. 396, at end of last sentence substituted "a fee that is set and deposited in accordance with 2-15-405" for "the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located"; and made minor changes in style. Amendment effective July 1, 2001.

The amendments to this section made by sec. 6, Ch. 109, L. 2001, and sec. 26, Ch. 396, L. 2001, were replaced by sec. 29(2), Ch. 396, L. 2001, a coordination section.

Saving Clause: Section 9, Ch. 109, L. 2001, was a saving clause.

1983 Amendment: In third sentence, after "executed" deleted "and acknowledged".

35-15-210. Fees for filing, copying, and services.

Compiler's Comments

Saving Clause: Section 9, Ch. 109, L. 2001, was a saving clause.

Effective Date: This section is effective October 1, 2001.

35-15-211. Filing of facsimile copy.

Compiler's Comments

1997 Amendment: Chapter 290 at end of first sentence in (1) deleted "provided that he receives the original document within 5 working days of the receipt of the facsimile copy"; deleted introductory phrase, (1)(a), (1)(b), (2), and (3) that read: "A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void"; and made minor changes in style. Amendment effective April 18, 1997.

Part 3
Shareholders, Directors, and Officers

35-15-302. Stockholders' meetings — place — time — call — notice — quorum.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 277, L. 2023. Amendment effective October 1, 2023.

35-15-303. Stockholder voting by mail.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-15-304. Directors and officers.

Case Notes

Stockholder's Authority to Sue: A single stockholder has no authority to bring suit on behalf of the corporation to quiet title to land for which the directors authorized the payment of rental. Noble v. Farmers Union Trading Co., 123 M 518, 216 P2d 925 (1950).

35-15-305. Filing required to have benefit of certain provisions.

Compiler's Comments

1983 Amendment: Near middle of section, before "by the president" changed "signed and sworn to" to "executed".

Part 4
Shares, Dividends, and Distributions

Part Case Notes

"Dividends" Not Deductible as "Interest" in Determining Income Tax: Money paid by farmers' cooperative corporation created under Montana law to preferred stockholders constitutes "dividends" and is not deductible as "interest" in determining income tax on ground that the stock creating proceeding was a nullity so that the preferred stock certificates were required to be regarded as notes, when it appeared that holders of preferred stock held it as stock and not as a note or other promise to pay par value of the shares (citing Title 14, ch. 2, R.C.M. 1947, now Title 35, ch. 15, MCA, as amended). Gallatin Farmers Co. v. Comm'r of Internal Revenue, 132 F2d 706 (9th Cir. 1942).

35-15-401. Classes of stock.

Compiler's Comments

2001 Amendment: Chapter 109 in (1) substituted "The purchase price of the shares of stock must be set by the cooperative association" for "The shares of stock shall not be less than $10 or more than $5,000 per share"; in (2) at end of third sentence substituted "extent determined by the cooperative association" for "extent of not exceeding 6% per annum on the par value thereof" and in fourth sentence at end substituted "as determined by the cooperative association" for "in proportion to the par value of their shares"; deleted former (3) that read: "(3) The stock heretofore issued in classes of different par values by any cooperative association is hereby legalized and made valid"; and made minor changes in style. Amendment effective October 1, 2001.

Saving Clause: Section 9, Ch. 109, L. 2001, was a saving clause.

35-15-403. Assignment of stock.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Failure of Jury Instructions to State Law of Case Regarding Test to Be Applied in Evaluating Insured's Opinion on Health — Reversible Error: When applying for credit life insurance, plaintiff's husband, Clarence, indicated that he was in good health. Less than 1 year later, Clarence died, and plaintiff submitted an insurance claim, but the claim was denied and the policy was rescinded, so plaintiff sued. At trial, the District Court gave jury instructions outlining both an objective test and a subjective test for evaluating Clarence's opinion as to the condition of his health and also failed to give an instruction setting forth defendant's defense theory. The law in Montana is to use a subjective standard for evaluating an insurance applicant's certification as to the applicant's health, so the District Court committed reversible error in also giving an instruction requiring an objective test. On remand, the District Court was instructed to instruct on the subjective theory and to give an instruction setting forth defendant's defense theory. Williams v. Union Fidelity Life Ins. Co., 2005 MT 273, 329 M 158, 123 P3d 213 (2005). See also Lentz v. Prudential Ins. Co. of Am., 164 M 197, 520 P2d 769 (1974), and Kiely Constr. v. Red Lodge, 2002 MT 241, 312 M 52, 57 P3d 836 (2002).

35-15-404. Share exempt from attachment and execution — sale upon death of member.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-15-411. Disposal of earnings — dividends — reserve fund — educational fund.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 277, L. 2023. Amendment effective October 1, 2023.

Case Notes

"Patronage Dividends" Not Deductible as Business Expenses in Computing Income Tax — "May" Defined: Money paid by farmers' cooperative corporation created under Montana law as so-called patronage dividends out of its earnings to purchasers from it of farmers' commodities is not deductible in computing corporation's income tax as "ordinary and necessary business expenses", where it appeared that so-called patronage dividends were paid in violation of this

section. "May" means that directors may or may not apportion earnings, but if directors choose so to do, they must follow statutory method of apportionment. Gallatin Farmers Co. v. Comm'r of Internal Revenue, 132 F2d 706 (9th Cir. 1942).

Dividends Not Proper Deduction for Taxation: In an action to recover a corporation license tax exacted from a cooperative association under section 84-1502, R.C.M. 1947, since amended (now 15-31-114, MCA), and paid under protest, the amount of dividends paid on capital stock outstanding was not a proper deduction in determining its net income for taxation purposes, such dividends being neither an expense of the association nor a payment of interest on indebtedness. Gallatin Farmers Co. v. Shannon, 109 M 155, 93 P2d 953 (1939).

"Net Profits" and Other Terms Synonymous: The words "net profits", as used in this section, mean that part of the receipts of a cooperative association remaining after payment of operating expenses, and the terms "profits", "net earnings", "funds", and "earnings", used indiscriminately in this section and 35-15-412, mean the same thing. Gallatin Farmers Co. v. Shannon, 109 M 155, 93 P2d 953 (1939).

Patronage Dividends an Expense in Computing Tax: Patronage dividends, which a cooperative association organized must pay under this section in apportioning its earnings if there be money remaining after paying certain other items, are in effect refunds or rebates to customers, whether they be stockholders or not, and are to be treated as a necessary expense of the association in computing the net income upon which it must pay a license tax. Gallatin Farmers Co. v. Shannon, 109 M 155, 93 P2d 953 (1939).

Part 5
Merger, Consolidation, and Sale of Assets

35-15-503. Meeting to consider plan — notice.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 277, L. 2023. Amendment effective October 1, 2023.

35-15-504. Filing of documents of merger or consolidation — effective date.

Compiler's Comments

1983 Amendment: Near middle of (1), after "signed" deleted "and acknowledged".

35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 16
AGRICULTURAL ASSOCIATIONS

Part 2
Formation

35-16-201. Who may incorporate — purposes of incorporation.

Law Review Articles

The Family: How Are You Going to Keep Them Down on the Farm?, MacDonald, 35 Mont. L. Rev. 88 (Winter 1974).

35-16-202. Petition for incorporation — contents and filing — bond.

Compiler's Comments

2019 Amendment: Chapter 271 in (1) at beginning substituted "The persons desiring to incorporate shall" for "Such persons must"; in (2) at end substituted "35-14-202" for "35-1-216"; and made minor changes in style. Amendment effective June 1, 2020.

1991 Amendment: At end of (2) substituted "35-1-216" for "35-1-202(2)(a)(v)". Amendment effective January 1, 1992.

1987 Amendment: Inserted (2) relating to liability limitations of directors or trustees of agricultural associations.

35-16-210. Existing associations — reorganization under chapter.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-16-212. Association operating two or more enterprises in different parts of state — control by delegates.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Members and Directors

Part Law Review Articles

Piercing the Corporate Veil in Montana, Brewster, 44 Mont. L. Rev. 91 (Winter 1983).

35-16-302. Procedure for receiving other members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-16-303. Withdrawal of membership land — procedure.

Compiler's Comments

2011 Amendment: Chapter 19 in (2) after "mortgage" inserted "holders"; in (4) after "mortgage" inserted "holder"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-16-304. Withdrawal — application to court for order.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-16-311. Meetings — voting — proxies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-16-314. Qualifications of directors — quorum — vacancies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 17
COOPERATIVE AGRICULTURAL MARKETING

Chapter Law Review Articles

The Family: How Are You Going to Keep Them Down on the Farm?, MacDonald, 35 Mont. L. Rev. 88 (Winter 1974).

Part 1
General

35-17-103. Definitions and associations as nonprofit entities.

Compiler's Comments

1999 Amendment: Chapter 130 in (3) substituted definition of member for former definition that read: ""member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock"; and made minor changes in style. Amendment effective October 1, 1999.

Part 2
Formation

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence.

Compiler's Comments

2019 Amendment: Chapter 271 in (2) at end substituted "35-14-202" for "35-1-216". Amendment effective June 1, 2020.

1999 Amendment: Chapter 130 in (1)(e) after "number of its directors or trustees" deleted "which shall not be less than 5 or more than 13"; inserted (1)(g) relating to designation of classes of members; inserted (1)(h) relating to authorized classes of stock; and made minor changes in style. Amendment effective October 1, 1999.

1991 Amendment: At end of (2) substituted "35-1-216" for "35-1-202(2)(a)(v)". Amendment effective January 1, 1992.

1987 Amendment: Inserted (2) relating to liability limitations of directors or trustees of cooperative agricultural marketing associations.

1983 Amendment: Near beginning of (2), after "incorporators and" deleted "acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances and".

Law Review Articles

The Family: How Are You Going to Keep Them Down on the Farm?, MacDonald, 35 Mont. L. Rev. 88 (Winter 1974).

35-17-203. Amendments to articles of incorporation.

Compiler's Comments

1999 Amendment: Chapter 130 substituted second sentence requiring majority vote of directors and members unless larger number required by articles for former second sentence that read: "Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose"; in third sentence substituted "must be executed and attested to on behalf of the association by its appropriate officers" for "shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary"; and made minor changes in style. Amendment effective October 1, 1999.

1983 Amendment: Near beginning of third sentence, after "executed" deleted "and acknowledged".

35-17-204. Adoption of chapter by existing associations.

Compiler's Comments

1983 Amendments: Chapter 131, near beginning of second sentence, substituted "prepare one original and one copy of" for "make out in duplicate".

Chapter 174, near beginning of second sentence, after "signed" deleted "and sworn to".

1981 Amendment: Substituted "secretary of state" for "corporation commissioners".

35-17-205. Fees for filing articles and amendments thereto.

Compiler's Comments

2001 Amendment: Chapter 396 in first sentence near middle after "secretary of state" deleted "$40" and at end deleted "$10" and inserted second sentence requiring that fees must be set and deposited in accordance with 2-15-405; and made minor changes in style. Amendment effective July 1, 2001.

35-17-206. Bylaws.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3

Operation — Members, Directors, and Officers

Part Law Review Articles

Piercing the Corporate Veil in Montana, Brewster, 44 Mont. L. Rev. 91 (Winter 1983).

35-17-301. Who may be members.

Compiler's Comments

1999 Amendment: Chapter 130 near beginning of (1) substituted "issue stock" for "issue common stock"; and made minor changes in style. Amendment effective October 1, 1999.

35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase by association.

Compiler's Comments

1999 Amendment: Chapter 130 inserted (2) relating to an association organized with capital stock and relating to membership and nonmembership stock; in (4) at beginning deleted "No stockholder of a cooperative association shall own more than one-twentieth of the issued common stock of the association, and" and at end after "one member may own" deleted "to any amount less than one-twentieth of the issued common stock"; deleted former (4) and (5) that read: "(4) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

(5) The association may at any time, except when the debt of the association exceeds 50% of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within 1 year thereafter"; inserted (5) allowing an association to acquire, recall, exchange, redeem, and reissue its own stock; inserted (6) relating to restoration of certain stock as authorized but unissued stock and denying preemptive right of stockholders to purchase additional stock; and made minor changes in style. Amendment effective October 1, 1999.

35-17-303. Limited liability of members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-17-304. Expulsion of member.

Compiler's Comments

1999 Amendment: Chapter 130 at beginning before "expulsion of a member" deleted "withdrawal or" and at end after "expulsion" deleted "or withdrawal"; and made minor changes in style. Amendment effective October 1, 1999.

35-17-305. Meetings of members — general and special — how called — notice — one vote for each member.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 277, L. 2023. Amendment effective October 1, 2023.

35-17-311. Directors — election — compensation — interest in contracts — vacancies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-17-312. Officers — election — bank as treasurer.

Compiler's Comments

1999 Amendment: Chapter 130 inserted (2) providing that president and vice presidents need not be directors or stockholders in certain instances and if provided in bylaws; and made minor changes in style. Amendment effective October 1, 1999.

35-17-313. Removal of officer or director.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-17-314. Referendum to membership of matters passed by board.

Compiler's Comments

1999 Amendment: Chapter 130 near beginning substituted "a majority of" for "40% of"; and made minor changes in style. Amendment effective October 1, 1999.

35-17-315. Creation of capital reserve — distribution of net earnings.

Compiler's Comments

1999 Amendment: Chapter 130 at beginning inserted "At least once annually, the directors shall determine and distribute net proceeds as follows"; inserted (1)(b) allowing share of net proceeds to be set aside for employees; inserted (1)(c) relating to dividend on capital stock; and made minor changes in style. Amendment effective October 1, 1999.

Part 4
Marketing Agreements

35-17-401. Marketing contracts.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
Merger, Consolidation, and Sale of Assets

35-17-504. Filing of documents of merger or consolidation — effective date.

Compiler's Comments

1983 Amendment: Near middle of (1), after "signed" deleted "and acknowledged".

1981 Amendment: Deleted "If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger" from the end of (2).

35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Inserted the third sentence in (1) that read: "The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.".

CHAPTER 18
RURAL COOPERATIVE UTILITIES

Chapter Case Notes

Electric Cooperative Requirement That New Customer Pay Prior Customer's Delinquent Bill Unreasonable: Granbois applied to have an electric cooperative provide service to her lot. However, the bylaws of the cooperative required that before she could receive service, Granbois pay the delinquent bill of the person who previously received service at the location. She paid the delinquent bill, began receiving service, and then brought an action against the cooperative on grounds that the policy violated unfair trade practices. Citing Howe v. Big Horn Elec. Co-op, 206 M 297, 670 P2d 936, 40 St. Rep. 1670 (1983), the Supreme Court held that the disparity in the relative positions of the cooperative and the consumer necessarily required the cooperative to deal reasonably with its members and that the policy requiring a new customer to either pay the predecessor's bill or go without electricity was an unreasonable restriction on Granbois's access to electric services. After determining that the case could proceed as an unfair trade practices action, the court remanded with instructions to refund Granbois the amount of the delinquent bill. Granbois v. Big Horn County Elec. Co-op, Inc., 1999 MT 222, 296 M 45, 986 P2d 1097, 56 St. Rep. 874 (1999).

Duty of Cooperative to Deal Reasonably With Members: Because of the disparity in relative positions of a rural electric cooperative and its members, a cooperative has a duty to deal with its members in a reasonable manner. Howe v. Big Horn Elec. Co-op, 206 M 297, 670 P2d 936, 40 St. Rep. 1670 (1983).

Co-op Unreasonable to Require Payment of Prior Resident's Bill as Condition of Provision of New Electric Service: It is a violation of a rural electric cooperative's duty to deal reasonably with its members for a co-op to use its superior bargaining position to force a prospective member to pay his predecessor's delinquent bill and to terminate service for nonpayment of that bill. In this case, the District Court found that the co-op's policy allowing disconnection of services for nonpayment of fees was reasonable. However, the District Court made no factual findings on the issue of whether renter's payment of landlord's prior bill was voluntarily made or was coerced as a condition of obtaining the services of the co-op. Therefore the case was remanded to District Court for a hearing on that issue. Howe v. Big Horn Elec. Co-op, 206 M 297, 670 P2d 936, 40 St. Rep. 1670 (1983).

Construction of Act: Nothing in the Rural Electric and Telephone Cooperative Act (prior to 1957 amendment) indicated that the Legislature intended that cooperatives should have the exclusive right to furnish electric energy in such rural areas and thus prevent competition by other authorized electric public utilities. Sheridan County Elec. Co-op, Inc. v. Montana-Dakota Util. Co., 128 M 84, 270 P2d 742 (1954).

Part 1
General

35-18-102. Definitions.

Compiler's Comments

2021 Amendment: Chapter 74 inserted definitions of present and remote communication; and made minor changes in style. Amendment effective March 25, 2021.

2001 Amendment: Chapter 406 deleted former (1) that read: "(1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives""; inserted definition of cooperative; in definition of member near middle after "and retaining membership" substituted "in a cooperative as provided by the articles of incorporation or by laws of the cooperative, including persons" for "therein and shall include a husband and wife"; in definition of person at end substituted "or other organization or group or persons" for "or any body politic"; in definition of rural area inserted (c) regarding former rural area and inserted (d) regarding incorporated municipality; and made minor changes in style. Amendment effective April 28, 2001.

Saving Clause: Section 7, Ch. 406, L. 2001, was a saving clause.

1987 Amendment: At end of (2)(e), after "February 1, 1971", deleted language that read: ""rural area", as applied to all corporations organized under the provisions of 35-18-105(2), means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of 1,500 persons except that an incorporated or unincorporated city or town with population more than 1,500 persons is considered a "rural area" for purposes of this chapter if the system or facilities serving the persons in the city or town is acquired by a cooperative by agreement with the company or entity serving the city or town, or if the city or town was served by the cooperative when it had a population of less than 1,500 persons and subsequently grew to a population more than 1,500 persons; but for the purposes of this chapter a "rural area" means an area not included within the boundary of any incorporated or unincorporated city or town having a population in excess of 3,500 persons which is not already being served by a system or facilities".

1981 Amendment: Added the exceptions at the end of (2)(e) (see 1987 amendment note for text).

Severability Clause: Section 12, Ch. 7, L. 1971, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

35-18-103. Construction.

Case Notes

Dial-Up Internet Service Allowed Under Rural Electric and Telephone Cooperative Act: Plaintiffs, who were members of a rural telephone cooperative, provided dial-up Internet services. When the cooperative entered the market to provide similar competitive services, plaintiffs sued on grounds that the Rural Electric and Telephone Cooperative Act prohibited the cooperative from engaging in Internet services. The District Court held for the cooperative, plaintiffs appealed, and the Supreme Court affirmed. Although the Legislature did not foresee the Internet when the Act was adopted, the plain language of the Act was to be construed liberally in allowing rural telephone cooperatives to provide adequate telephone service as technology advanced. Internet dial-up service, although not specifically enumerated in 35-18-105, is sufficiently similar to telephone service to be allowed under the Act. Weber v. Interbel Tel. Co-op, Inc., 2003 MT 320, 318 M 295, 80 P3d 88 (2003).

35-18-104. Exemption from jurisdiction of public service commission.

Compiler's Comments

2007 Amendment: Chapter 234 deleted former (2) that read: "(2) if they operate in a rural area described in 35-18-102(6)(d), shall use the formulas provided in pole attachment rules of the federal communications commission or successor formulas with respect to any matters pertaining to rates, terms, or conditions of any pole attachment agreement between themselves and any pole tenant or lessee made after April 28, 2001"; and made minor changes in style. Amendment effective June 30, 2009.

Saving Clause: Section 2, Ch. 234, L. 2007, was a saving clause.

2001 Amendment: Chapter 406 inserted (2) regarding use of formulas provided in pole attachment rules of federal communications commission; and made minor changes in style. Amendment effective April 28, 2001.

Saving Clause: Section 7, Ch. 406, L. 2001, was a saving clause.

35-18-105. Permissible purposes for incorporation.

Compiler's Comments

2001 Amendment: Chapter 7 in (1) in two places substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendment: Chapter 61 inserted (3) allowing organization under federal authorization; and made minor changes in style.

1987 Amendment: Near beginning of (2), after "available", deleted "in rural areas" and at end of (2), before "users", deleted "rural".

1985 Amendment: At end of (2) after "thereof", deleted "provided that nonduplication of lines, facilities, or systems providing reasonably adequate service will result therefrom".

Case Notes

Dial-Up Internet Service Allowed Under Rural Electric and Telephone Cooperative Act: Plaintiffs, who were members of a rural telephone cooperative, provided dial-up Internet services. When the cooperative entered the market to provide similar competitive services, plaintiffs sued on grounds that the Rural Electric and Telephone Cooperative Act prohibited the cooperative from engaging in Internet services. The District Court held for the cooperative, plaintiffs appealed, and the Supreme Court affirmed. Although the Legislature did not foresee the Internet when the Act was adopted, the plain language of the Act was to be construed liberally in allowing rural telephone cooperatives to provide adequate telephone service as technology advanced. Internet dial-up service, although not specifically enumerated in this section, is sufficiently similar to telephone service to be allowed under the Act. Weber v. Interbel Tel. Co-op, Inc., 2003 MT 320, 318 M 295, 80 P3d 88 (2003).

Telephone Companies — Right to Compete: Private telephone companies are free to compete at any time in Montana, and telephone cooperatives may compete when no reasonably adequate service is available. Intermountain Tel. and Power Co. v. Dept. of Public Service Regulation, 201 M 74, 651 P2d 1015, 39 St. Rep. 1962 (1982). (Decided prior to 1985 amendment that eliminated nonduplication provisions from rural cooperative utilities law.)

35-18-106. Powers of cooperatives.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (2)(a), (2)(b), (2)(c), and (2)(e) substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 125 in (1)(i) inserted reference to Title 70, chapter 30; rearranged section to better differentiate corporations organized under 35-18-105(1) and (2); and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.*1993 Amendment:* Chapter 61 at end of (14) inserted "or authorized under federal law"; and made minor changes in style.

1987 Amendment: In (13)(a), near beginning after "systems", deleted "in rural areas".

1985 Amendment: At end of (13)(a) after "thereof", deleted "provided that no duplication of lines, facilities, or systems providing reasonably adequate service will result therefrom".

Case Notes

Annotator's Note: These cases were decided prior to 1985 amendment that eliminated nonduplication provisions from rural cooperative utilities law.

Moving or Raising Utility Wires — Police Power, Not Eminent Domain: Under 69-4-603, a utility was required to move or raise utility wires so that oversized objects could be moved through public streets. The statute was determined to be an exercise of police power rather than sounding in eminent domain. Therefore, due process requirements of the 14th amendment may be met without compensation. Four factors were cited in the determination that the statute exercises police power: (1) public safety is concerned; (2) a public benefit is conferred; (3) a reasonable and necessary public use is allowed; and (4) the public's right to use the highways is recognized under the statute. Yellowstone Valley Elec. Co-op, Inc. v. Ostermiller, 187 M 8, 608 P2d 491 (1980).

Electric Service:

When electrical service was available from utility and utility was ready, willing, and able to serve new customer, electrical cooperative had no right under this section to serve customer, notwithstanding that cooperative had available power line 3,400 feet from site while utility's closest line was 6 miles from site, since availability of service from existing facilities and plants cannot be determined solely on basis of distance between existing transmission lines and site where electrical energy is to be delivered. Mont. Power Co. v. Sun River Elec. Co-op, Inc., 157 M 468, 487 P2d 307 (1971).

In determining that electrical service was available from existing facilities of private company thereby denying cooperative right to supply electric service to potential customer, court relied upon evidence that private company was serving other customers in area and evidence that distance private company would have to extend its service to supply new customer was less than distance cooperative would have to extend its service to supply same customer. Mont. Power Co. v. Fergus Elec. Co-op, 149 M 258, 425 P2d 329 (1967).

The right of a cooperative electric company to service nonmembers not in excess of 10% of the total number of members is subject to the rural areas limitation, and when a rural area served by a co-op is annexed by a city of more than 3,500 population, the co-op may continue to serve existing customers in the annexed area but is not authorized to extend its services to other customers there. Mont. Power Co. v. Vigilante Elec. Co-op, Inc., 143 M 119, 387 P2d 718 (1963).

A rural electric cooperative did not have a lawful right to service an addition contemplated, planned, promoted, and organized as a subdivision to a city. Mont. Power Co. v. Park Elec. Co-op, 140 M 293, 371 P2d 1 (1962), distinguished in Mont. Power Co. v. Vigilante Elec. Co-op, Inc., 143 M 119, 387 P2d 718 (1963).

Action to Determine Rights: When a controversy existed between a rural electric cooperative and an electric power company as to the right of the cooperative to supply service to an addition to the city, the cooperative could have brought an action under the Uniform Declaratory Judgments Act to determine its legal position before proceeding to install facilities to service the addition. Mont. Power Co. v. Park Elec. Co-op, 140 M 293, 371 P2d 1 (1962).

Underground Installations: A power company that operated an electric line along the edge of an addition to a city was not required to pay for facilities and underground installations constructed by a rural electric cooperative in such addition despite protests of power company. Mont. Power Co. v. Park Elec. Co-op, 140 M 293, 371 P2d 1 (1962).

Construction of Section: This section (prior to 1957 amendment) indicated the intention to limit the rights of the cooperatives in such rural areas to certain users. Such cooperatives do not have an implied exclusive franchise right whereby other public utilities would be prevented from competing therein. Sheridan County Elec. Co-op, Inc. v. Montana-Dakota Util. Co., 128 M 84, 270 P2d 742 (1954).

35-18-107. Foreign corporations.

Compiler's Comments

2001 Amendment: Chapter 7 in (1) near beginning substituted "electrical energy" for "electric energy"; in (2) near end of second sentence before "certified mail" deleted "registered or"; and made minor changes in style. Amendment effective October 1, 2001.

Part 2

Formation — Articles of Incorporation — Bylaws

35-18-203. Articles of incorporation.

Compiler's Comments

2019 Amendment: Chapter 271 in (2)(a) near end substituted "35-14-202" for "35-1-216". Amendment effective June 1, 2020.

2001 Amendment: Chapter 406 inserted (2)(b) regarding classification of members in cooperative; and made minor changes in style. Amendment effective April 28, 2001.

Saving Clause: Section 7, Ch. 406, L. 2001, was a saving clause.

1991 Amendment: At end of (2) substituted "35-1-216" for "35-1-202(2)(a)(v)". Amendment effective January 1, 1992.

1987 Amendment: Inserted (2) relating to liability limitations of trustees of rural cooperative utilities.

1983 Amendment: In (1), after "signed" deleted "and acknowledged".

35-18-204. Amendment of articles of incorporation.

Compiler's Comments

1983 Amendment: Near beginning of (2), after "executed" deleted "and acknowledged".

35-18-205. Change of principal office without amendment.

Compiler's Comments

1983 Amendment: Near middle of first sentence, after "executed" deleted "and acknowledged".

35-18-206. Existing corporations — reorganization under chapter — articles of conversion.

Compiler's Comments

2001 Amendment: Chapter 7 in introductory clause near middle substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001.

1987 Amendment: In introductory language, at beginning of section after "electrical energy", inserted "in rural areas" and after "telephone service" deleted "in rural areas".

1983 Amendment: Near middle of first sentence of (3), after "executed" deleted "and acknowledged".

35-18-207. Bylaws.

Compiler's Comments

2021 Amendment: Chapter 74 in (2)(a) at beginning inserted exception clause; inserted (2)(b) concerning holding a remote meeting to consider utilizing remote communication; and made minor changes in style. Amendment effective March 25, 2021.

Case Notes

Electric Cooperative Requirement That New Customer Pay Prior Customer's Delinquent Bill Unreasonable: Granbois applied to have an electric cooperative provide service to her lot. However, the bylaws of the cooperative required that before she could receive service, Granbois pay the delinquent bill of the person who previously received service at the location. She paid the delinquent bill, began receiving service, and then brought an action against the cooperative on grounds that the policy violated unfair trade practices. Citing Howe v. Big Horn Elec. Co-op, 206 M 297, 670 P2d 936, 40 St. Rep. 1670 (1983), the Supreme Court held that the disparity in the relative positions of the cooperative and the consumer necessarily required the cooperative to deal reasonably with its members and that the policy requiring a new customer to either pay the predecessor's bill or go without electricity was an unreasonable restriction on Granbois's access to electric services. After determining that the case could proceed as an unfair trade practices action, the court remanded with instructions to refund Granbois the amount of the delinquent bill. Granbois v. Big Horn County Elec. Co-op, Inc., 1999 MT 222, 296 M 45, 986 P2d 1097, 56 St. Rep. 874 (1999).

Bylaw at Variance With Permissive Statutory Provision: Bylaws may contain regulation and management provisions not inconsistent with statutory provisions. A bylaw which is at variance with a permissive provision of the statutes is not so "inconsistent" as to require voiding of the bylaw provision. Dreyer v. Bd. of Trustees of Mid-Rivers Tel., Inc., 183 M 43, 598 P2d 205 (1979).

Part 3
Operation — Members, Trustees, and Officers

Part Case Notes

Duty of Cooperative to Deal Reasonably With Members: Because of the disparity in relative positions of a rural electric cooperative and its members, a cooperative has a duty to deal with its members in a reasonable manner. Howe v. Big Horn Elec. Co-op, 206 M 297, 670 P2d 936, 40 St. Rep. 1670 (1983).

Co-op Unreasonable to Require Payment of Prior Resident's Bill as Condition of Provision of New Electric Service: It is a violation of a rural electric cooperative's duty to deal reasonably with its members for a co-op to use its superior bargaining position to force a prospective member to pay his predecessor's delinquent bill and to terminate service for nonpayment of that bill. In this case, the District Court found that the co-op's policy allowing disconnection of services for nonpayment of fees was reasonable. However, the District Court made no factual findings on the issue of whether renter's payment of landlord's prior bill was voluntarily made or was coerced as a condition of obtaining the services of the co-op. Therefore the case was remanded to District Court for a hearing on that issue. Howe v. Big Horn Elec. Co-op, 206 M 297, 670 P2d 936, 40 St. Rep. 1670 (1983).

Part Law Review Articles

Piercing the Corporate Veil in Montana, Brewster, 44 Mont. L. Rev. 91 (Winter 1983).

35-18-301. Members.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (1) in four places substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001. The amendment by Ch. 406 rendered the amendment by Ch. 7 void.

Chapter 406 in (1) substituted language denying membership in cooperative unless person agrees to use electrical energy and electrical energy delivery services as provided in bylaws for former text that read: "No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The bylaws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof"; in (2) substituted second sentence regarding articles of incorporation and bylaws prescription of matters pertaining to membership and membership class for former sentence that read: "The bylaws may prescribe additional qualifications and limitations in respect to membership"; inserted (3) regarding classification of members; inserted (4) regarding designation of voting delegates; and made minor changes in style. Amendment effective April 28, 2001.

Saving Clause: Section 7, Ch. 406, L. 2001, was a saving clause.

Case Notes

Electric Cooperative Requirement That New Customer Pay Prior Customer's Delinquent Bill Unreasonable: Granbois applied to have an electric cooperative provide service to her lot. However, the bylaws of the cooperative required that before she could receive service, Granbois pay the delinquent bill of the person who previously received service at the location. She paid the delinquent bill, began receiving service, and then brought an action against the cooperative on grounds that the policy violated unfair trade practices. Citing Howe v. Big Horn Elec. Co-op, 206 M 297, 670 P2d 936, 40 St. Rep. 1670 (1983), the Supreme Court held that the disparity in the relative positions of the cooperative and the consumer necessarily required the cooperative to deal reasonably with its members and that the policy requiring a new customer to either pay the predecessor's bill or go without electricity was an unreasonable restriction on Granbois's access to electric services. After determining that the case could proceed as an unfair trade practices action, the court remanded with instructions to refund Granbois the amount of the delinquent bill. Granbois v. Big Horn County Elec. Co-op, Inc., 1999 MT 222, 296 M 45, 986 P2d 1097, 56 St. Rep. 874 (1999).

35-18-302. Nonliability of members, trustees, and officers for debts of cooperative.

Compiler's Comments

2001 Amendment: Chapter 173 near end of (1) after "debts" inserted "or obligations"; inserted (2) exempting cooperative trustee or officer from personal liability except for failure to perform, willful misconduct, or recklessness; and made minor changes in style. Amendment effective March 30, 2001.

35-18-303. Meetings of members — general and special — place — notice — quorum — voting.

Compiler's Comments

2021 Amendment: Chapter 74 in (4) near end after "mail" inserted "or by another method"; in (5) in three places after "present" deleted "in person"; in (6) in second sentence at beginning substituted "Voting is by members present" for "Voting shall be in person", near end of second sentence substituted "by proxy, by mail, by electronic voting, or by any combination of the three" for "by proxy or by mail, or both", in third sentence in middle substituted "by proxy, by mail, or by electronic voting" for "by proxy or by mail", and in third sentence near end substituted "proxy, mail, or electronic voting, or by any combination of the three" for "proxy or mail voting or both"; and made minor changes in style. Amendment effective March 25, 2021.

1981 Amendment: Substituted "at such place as shall be determined by the board of trustees" for "in the city or town in which the principal office of the cooperative is located" at the end of (3); inserted "or 50 members present in person, whichever is fewer" before "shall constitute a quorum" in (5); inserted "or number" after "greater percentage" in (5).

Case Notes

Meeting Place — Bylaws Providing for Board Determination: Where a cooperative's bylaws allowed the trustees to determine the place of the annual meeting but failed to expressly name the meeting place, the statute prevailed and the meeting was ordered held in the place of the principal cooperative office, even though the trustees had acted to fix the meeting place in a different location. (Case decided prior to amendment by Ch. 131, L. 1981.) Dreyer v. Bd. of Trustees of Mid-Rivers Tel., Inc., 183 M 43, 598 P2d 205 (1979).

35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife.

Compiler's Comments

1993 Amendment: Chapter 41 in (2)(a) inserted exception clause regarding provision of insurance coverage; inserted (5) allowing extension of benefit coverage to trustees; and made minor changes in style.

1981 Amendment: Substituted "the board of trustees may establish a fixed sum . . . for: (a) attendance . . . (b) representing . . . approved by the board" for "a fixed fee and expenses of attendance, if any, may be allowed for attendance at each meeting of the board of trustees" at the end of (2).

Case Notes

Bylaws Providing for "Fixed Fee" by Board Resolution: The bylaws of a telephone cooperative provided that a fixed per diem fee and expenses could by board resolution be allowed to the trustees for attending meetings. The language of this section does not necessarily mean that the "fixed fee" must be set forth in the bylaw itself. The bylaws provision that the fee and expenses should be fixed by board resolution is simply a method for providing these items. Since the bylaw provision of the statute is an exception to the statutory requirement of approval of board compensation, the trustees have no clear legal duty to procure the prior approval of the membership for the resolution. (Case decided prior to amendment by Ch. 237, L. 1981.) Dreyer v. Bd. of Trustees of Mid-Rivers Tel., Inc., 183 M 43, 598 P2d 205 (1979).

35-18-312. Trustees — term — quorum — powers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-18-313. Voting districts.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in (1) near middle substituted "electrical energy" for "electric energy"; (amendment by Ch. 406 rendered amendment by Ch. 7 void) and made minor changes in style. Amendment effective October 1, 2001.

Chapter 406 in (1)(a) in introductory clause at beginning inserted "For corporations organized under the provisions of 35-18-105(2)" and after "in which a cooperative supplies" deleted "electric energy or"; inserted (2) regarding voting districts; and made minor changes in style. Amendment effective April 28, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Saving Clause: Section 7, Ch. 406, L. 2001, was a saving clause.

Case Notes

Permissive Nature of Statute: In this section, the permissive words "may provide" apply to the phrase "in respect to each such voting district" and thus to subsection (1) of this section in its entirety. Therefore, this section is not intended to mandate an exclusive manner in which districts can be used by a cooperative in the selection process of qualified trustees. Dreyer v. Bd. of Trustees of Mid-Rivers Tel., Inc., 183 M 43, 598 P2d 205 (1979).

35-18-314. Officers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-18-316. Allocation and retirement of patronage capital — retention of unclaimed retirement payments.

Compiler's Comments

2019 Amendment: Chapter 47 in (1) substituted current text requiring that a cooperative's patronage capital be allocated in accordance with the section for former text that read: "Revenue of a cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to"; inserted (2)(a) requiring that patronage capital be determined annually and reflect revenues in excess of costs of doing business; in (2)(b) inserted introductory clause; inserted (3) through (6) concerning the allocation and retirement of patronage capital; in (8) in first sentence near middle substituted "retain retirements of patronage capital" for "retain patronage refunds" and at end substituted "year in which retirement is made" for "year in which the refunds are given" and in last sentence at beginning substituted "Unclaimed retirements" for "Refunds"; and made minor changes in style. Amendment effective March 7, 2019.

2001 Amendment: Chapter 7 in (1)(f) near middle substituted "electrical energy" for "electric energy". Amendment effective October 1, 2001.

1993 Amendment: Chapter 263 inserted (3) requiring retention of patronage refunds that remain unclaimed for 5 years and providing that the refunds be used for educational purposes; and made minor changes in style.

Case Notes

Allegation of Breach Regarding Capital Credits — Statute of Limitations Expired: The plaintiffs were former customers of the defendant, a rural electrical cooperative. The plaintiffs sued the defendant for not refunding capital credits to customers as required under 35-18-316. The District Court granted the defendant summary judgment, holding that the statute of limitations on the plaintiffs' claims had expired. On appeal, the Supreme Court affirmed, holding that none of the claims had been revived by acknowledgment and that the defendant had not fraudulently concealed facts that would have tolled the statute of limitations. Wolfe v. Flathead Elec. Co-op, Inc., 2018 MT 276, 393 Mont. 312, 431 P.3d 327.

35-18-317. Disposition or encumbrance of property.

Compiler's Comments

2017 Amendment: Chapter 130 inserted (1)(b) defining substantial portion; and made minor changes in style. Amendment effective March 31, 2017.

2013 Amendment: Chapter 55 in (1) after "subsection (2)" inserted "and in accordance with 35-18-318"; in (1)(a) before "members" inserted "cooperative"; in (1)(b) substituted "approved by not less than two-thirds of all the members of the cooperative; and" for "by the affirmative vote of not less than two-thirds of all the members of the cooperative and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained"; in (1)(c) at beginning inserted "described"; in (2) in introduction inserted exception clause and before "members" inserted "cooperative"; in (2)(b) inserted "necessary"; and made minor changes in style. Amendment effective July 1, 2013.

Saving Clause: Section 4, Ch. 55, L. 2013, was a saving clause.

Severability: Section 5, Ch. 55, L. 2013, was a severability clause.

Applicability: Section 7, Ch. 55, L. 2013, provided: "[This act] applies to contracts, agreements, and forecasts begun after July 1, 2013."

1987 Amendment: In (1), at beginning, inserted exception clause; in (2), at beginning, deleted "However, notwithstanding anything herein contained or any other provisions of law" and at end deleted "Further, the board may, upon the authorization of a majority of those members of the cooperative voting at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to another cooperative or foreign corporation doing business in this state pursuant to the act under which the cooperative is incorporated"; and inserted (3) through (5) relating to the method required for disposing of cooperative property.

35-18-318. Long-term indebtedness — membership approval and review — cooperative requirements.

Compiler's Comments

2013 Amendment: Chapter 55 inserted (2) through (10) regarding approval of agreements and contracts, rate impact studies, exemptions, load forecasts, and duties and responsibilities of generation and transmission cooperatives and providing definitions; and made minor changes in style. Amendment effective July 1, 2013.

Saving Clause: Section 4, Ch. 55, L. 2013, was a saving clause.

Severability: Section 5, Ch. 55, L. 2013, was a severability clause.

Applicability: Section 7, Ch. 55, L. 2013, provided: "[This act] applies to contracts, agreements, and forecasts begun after July 1, 2013."

35-18-325. Duties of trustees and officers.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

35-18-326. Trustee or officer conflict of interest.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

35-18-327. Definitions.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

35-18-328. Authority to indemnify.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

35-18-329. Mandatory indemnification.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

35-18-330. Court-ordered indemnification.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

35-18-331. Determination and authorization of indemnification.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

35-18-332. Insurance.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

35-18-333. Application.

Compiler's Comments

Effective Date: Section 12, Ch. 173, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

Part 4
Merger, Consolidation, and Dissolution

35-18-401. Procedure for merger.

Compiler's Comments

1983 Amendment: Near middle of first sentence of (3), after "executed" deleted "and acknowledged".

35-18-402. Procedure for consolidation.

Compiler's Comments

1983 Amendment: Near middle of first sentence of (3), after "executed" deleted "and acknowledged".

35-18-404. Dissolution of cooperative which has not commenced business.

Compiler's Comments

1983 Amendment: In (1), after "executed" deleted "and acknowledged".

35-18-405. Dissolution and winding up of cooperative that has commenced business.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: At end of (1) substituted "all of the members of the cooperative" for "those members voting thereon at such meeting".

1983 Amendment: Near middle of first sentence of (2) and (6), after "executed" deleted "and acknowledged".

Part 5
Filings and Fees

35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Near middle of first sentence of (1), after "executed" deleted "and acknowledged".

35-18-502. Fees to be charged by secretary of state.

Compiler's Comments

2001 Amendment: Chapter 396 at end of (1)(a) deleted "$40"; at end of (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), and (1)(g) deleted "$10"; inserted (2) requiring that fees must be set and deposited in accordance with 2-15-405; and made minor changes in style. Amendment effective July 1, 2001.

35-18-503. Exemption from taxes.

Compiler's Comments

1999 Amendment: Chapter 426 inserted reference to 15-53-138. Amendment effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

1997 Amendment: Chapter 65 after "chapter" deleted "shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof to whom electricity or telephone service was supplied during the previous calendar year within the state and"; and made minor changes in style. Amendment effective July 1, 1997.

1991 Amendment: After "supplied" inserted "during the previous calendar year"; and made minor changes in style. Amendment effective April 27, 1991.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

1985 Amendment: Near middle inserted exception clause referring to 10-4-201. Amendment effective January 1, 1987.

CHAPTER 20
CEMETERY ASSOCIATIONS

Part 1
Formation

35-20-101. Permissible purposes for association — first meeting — election of trustees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-20-102. Classification of trustees — staggered terms.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-20-103. Document of incorporation — contents — filing.

Compiler's Comments

2019 Amendment: Chapter 271 in (2) at end substituted "35-14-202(2)(d)" for "35-1-216(2)(d)". Amendment effective June 1, 2020.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: At end of (2) substituted "35-1-216(2)(d)" for "35-1-202(2)(a)(v)". Amendment effective January 1, 1992.

1987 Amendment: Inserted (2) relating to liability limitations of trustees of cemetery associations.

35-20-104. Effect of filing — powers of association — eminent domain.

Compiler's Comments

2001 Amendment: Chapter 125 in first sentence substituted "35-20-103" for "the last section" and in second sentence after "private property for public use" deleted "to be used exclusively"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.Case Notes

Land Owned by Cemetery Association: Land owned by a cemetery association organized for profit is private property that may be taken by eminent domain for public cemetery purposes. Forestvale Cemetery Ass'n v. Helena Cemetery Ass'n, 62 M 52, 203 P 359 (1921).

Part 2
Operations Generally — Trustees of Association

35-20-208. Trustees to manage — quorum — officers — bond of treasurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-20-209. Duties of secretary — record of interments.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-20-216. Inalienability of lots.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Permanent Care and Improvement Fund
Trustees of Fund

35-20-302. Trustees of fund — appointment by district court — qualifications — powers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-20-313. Investment of fund.

Compiler's Comments

2015 Amendment: Chapter 168 after "17-6-211" deleted "and not otherwise"; and made minor changes in style. Amendment effective April 1, 2015.

Applicability: Section 5, Ch. 168, L. 2015, provided: "[This act] applies to all permanent care and improvement funds established pursuant to 35-20-301."

35-20-316. Permanent care and improvement fund — management of fund.

Compiler's Comments

Effective Date: Section 4, Ch. 168, L. 2015, provided that this section is effective on passage and approval. Approved April 1, 2015.

Applicability: Section 5, Ch. 168, L. 2015, provided: "[This act] applies to all permanent care and improvement funds established pursuant to 35-20-301."

CHAPTER 21
MAUSOLEUM AND COLUMBARIUM AUTHORITIES

Part 8
Mausoleum-Columbarium Authorities

Part Compiler's Comments

Effective Date: This part is effective October 1, 1999.

35-21-810. Disposition of remains — liability.

Compiler's Comments

2009 Amendment: Chapter 208 in (1) at end after "decedent" substituted "is as provided in 37-19-904" for "vests in, and the duty of interment and the liability for the reasonable cost of interment of the remains devolves upon, the following in the order named:

(a) a spouse;
(b) a majority of adult children;
(c) a parent;
(d) a close relative of the decedent; or

(e) in the absence of a person listed in subsections (3)(a) through (3)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by the board of funeral service by rule"; in (2) after "listed in" substituted "37-19-904" for "subsection (1)". Amendment effective October 1, 2009.

35-21-827. Property interests in plot — estate tax.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 at end of (5) substituted "estate taxes" for "inheritance taxes". Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

CHAPTER 30
TRANSACTIONS WITH FOREIGN ADVERSARIES

Part 1
Prohibited Transactions

35-30-103. Prohibited transactions with foreign adversaries.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Operations Generally — Trustees of Associations

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-20-209. Duties of secretary — record of interments.

Compiler's Comments

[illegible]

2009 Amendment: Chapter 56 made [illegible]. Amendment effective October 1, 2009.

35-20-216. Inalienability of lots.

Compiler's Comments

2009 Amendment: Chapter 56 made [illegible]. Amendment effective October 1, 2009.

Part 3

Permanent Care and Improvement Fund

Trustees of Fund

35-20-302. Trustees of fund — appointment by district court — qualifications — powers.

Compiler's Comments

2009 Amendment: Chapter 56 made [illegible]; and made minor changes in style. Amendment effective October 1, 2009.

35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

35-20-315. Investment of fund.

Compiler's Comments

2015 Amendment: Chapter 168 after "17-6-211" deleted "and not otherwise"; and made minor changes in style. Amendment effective April 1, 2015.

Applicability: Section 5, Ch. 168, L. 2015, provided: "[This act] applies to all permanent care and improvement funds established pursuant to 35-20-301."

35-20-316. Permanent care and improvement fund — management of fund.

Compiler's Comments

Effective Date: Section 4, Ch. 168, L. 2015, provided that this section is effective on passage and approval. Approved April 1, 2015.

Applicability: Section 5, Ch. 168, L. 2015, provided: "[This act] applies to all permanent care and improvement funds established pursuant to 35-20-301."

CHAPTER 21

MAUSOLEUM AND COLUMBARIUM AUTHORITIES

Part 5

Mausoleum-Columbarium Authorities

Part Compiler's Comments

Effective Date: This part is effective [illegible] 1, 1999.

TITLE 36
RESERVED

TITLE 37
PROFESSIONS AND OCCUPATIONS

CHAPTER 1
GENERAL PROVISIONS

Part 1
Duties and Authority of Department, Director, and Boards

Part Administrative Rules

Title 24, chapter 1, ARM Organizational rule of Department of Labor and Industry.

Title 24, chapter 2, ARM Overall Department of Labor and Industry rules.

Part Collateral References

Licensed to Bill: How Licensing Boards Function With Government Endorsement, Mont. Leg. Serv. Div. (2015).

Fee-Financed Government: Issues Raised by Licensing Boards and Other Agencies Before the 2013-2014 Economic Affairs Interim Committee, Mont. Leg. Serv. Div. (2014).

37-1-101. Duties of department.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 183, L. 2023, repealed sec. 10, Ch. 427, L. 2015, and sec. 5, Ch. 50, L. 2019, which terminated the 2015 amendments to this section September 30, 2023. Effective April 19, 2023.

2019 Amendment: Chapter 195 in (1) inserted second sentence regarding timelines for issuance of routine licenses and inserted last sentence regarding issuance of nonroutine licenses; and made minor changes in style. Amendment effective October 1, 2019.

Extension of Termination Date: Section 5, Ch. 50, L. 2019, amended sec. 10, Ch. 427, L. 2015, by extending the termination date imposed by Ch. 427 to September 30, 2023. Effective July 1, 2019.

2015 Amendment: Chapter 427 in (10) inserted last sentence regarding board of public accountants. Amendment effective October 1, 2015, and terminates September 30, 2019.

2007 Amendments — Composite Section: Chapter 11 in (5) near end after "board" inserted "or a program"; in (9)(a) near beginning after "notice to the" inserted "board and to the"; inserted (9)(b) through (9)(d) outlining additional department duties regarding boards; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 44 in introductory clause after "department" deleted "of labor and industry"; and in (8) at end substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

Chapter 225 in (8) substituted "37-1-307(1)(d)" for "37-1-307(1)(e)"; inserted (12) concerning uniform rules for public notice; and made minor changes in style. Amendment effective January 1, 2009.

Severability: Section 6, Ch. 225, L. 2007, was a severability clause.

2005 Amendment: Chapter 467 at end of introductory clause substituted "shall" for "may"; in (1) at beginning inserted "establish and", after "corresponding" substituted "receiving and processing routine" for "taking", after first "licenses" inserted "as defined by a board", after "issuing and" deleted "denying licenses granted by the boards", after "renewing" inserted "routine", after second "licenses" inserted "as defined by a board", and after "licensees" substituted "setting administrative fees, preparing agendas and meeting notices, conducting mailings" for "registering"; in (2) after "standardize" inserted "policies and procedures"; in (4) at beginning inserted "contract for" and at end after "board" deleted "or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination"; in (6) after "boards" inserted "and programs"; in (7) after "setting" inserted "administrative fees and"; in (8) near middle after "individual's" deleted "licensing"; inserted (9) requiring notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner; inserted (10) requiring monitoring of a board's cash balances; inserted (11) requiring the establishment of policies and procedures to set fees; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in introductory clause after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 429 at end of introductory clause substituted "may" for "shall"; in (1), after "administrative", inserted "legal", after "issuing" inserted "and denying", and before "registering" inserted "disciplining licensees"; at beginning of (5), before "investigate", deleted "at the request of a board"; in (7), after "rules", substituted "setting expiration, renewal, and termination dates for licenses" for "establishing expiration dates of licenses for barbers, barbershops, professional engineers, professional land surveyors, nursing home administrators, optometrists, plumbers, social workers, speech-language pathologists, audiologists, and radiologic technologists"; and inserted (8) authorizing Department to issue notice and pursue action against licensed individual before licensing board pursuant to 37-1-307(1)(e). Amendment of 37-1-101(7) effective April 13, 1995, for the purpose of drafting rules that will be adopted on or after October 1, 1995.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1989 Amendments: Chapter 83, in (7) inserted "professional" before "land surveyors".

Chapter 413, changed reference to speech pathologist to reference to speech-language pathologist.

1985 Amendment: In (7) after "plumbers", inserted "social workers, speech pathologists, audiologists".

1985 Statement of Intent: The statement of intent attached to Ch. 307, L. 1985, provided: "A statement of intent is required for this bill because it authorizes the department of commerce to adopt rules establishing uniform expiration dates for licenses for social workers, speech pathologists, and audiologists. It is the intent of the legislature that, in establishing a standard expiration date, the rules take into account any credit a person may have in what would have been his licensure period. The rules should also take into account the expiration dates of other licenses in order to spread the workload more evenly over the year."

1983 Amendment: Inserted (7) requiring Department to adopt rules establishing license expiration dates.

1983 Statement of Intent: The statement of intent attached to Ch. 390, L. 1983, provided: "A statement of intent is required with House Bill 633 because it provides that the department of commerce may establish renewal dates for certain licenses by rule.

It is the intention of the legislature that in the promulgation of such rules, the department will consult with the affected boards, and, where possible, the professions to be regulated. It is the intention of this legislature that in attempting to meet the needs of the department in maintaining efficient licensing procedures, the needs of the board and the professions regulated are given the closest scrutiny and consideration."

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in the introductory clause.

Chapter 293 deleted "a pro rata basis according to the number of man-days and the actual operating costs of the department for each board" in (6); added "an equitable basis as determined by the department" to (6).

Case Notes

Revocation of Real Estate Broker's License — No Denial of Rights at Administrative Hearing — Hearing Examiner and Board Attorney as Deputy Attorneys General: A hearing examiner recommended that Sorini's real estate broker's license be revoked for violations of 37-51-321. On appeal, Sorini argued that she was denied her rights at the administrative hearing because both the hearing examiner and the attorney for the Board of Realty Regulation were deputies in the Attorney General's office; however, she failed to submit any proof to support this allegation. The Supreme Court noted that 2-4-611 establishes the manner in which a party may file an affidavit for disqualification of a hearing examiner, holding that in the absence of an affidavit it was not proper to raise the issue on appeal. The court agreed that having a greater separation of prosecutorial and decisionmaking functions would eliminate an appearance of impropriety, but found nothing to warrant a reversal of the District Court. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Attorney General's Opinions

Construction of Inconsistent Statutes: Statutes relating to the Board of Public Accountants, contained in Title 37, ch. 50, appear to have been amended by implication by the Executive Reorganization Act of 1971, now codified as part of Titles 2, 37, and 39, thereby transferring the duties specified in 37-1-101 and 37-1-121 from the Board of Public Accountants to the Department of Professional and Occupational Licensing (now Department of Labor and Industry) and the director thereof. Where two acts of the Legislature are inconsistent on the same subject, the prior statute is to be treated as repealed by the subsequent statute. 35 A.G. Op. 58 (1974).

37-1-104. Standardized forms.

Compiler's Comments

2005 Amendment: Chapter 467 at beginning of first sentence substituted "The department shall" for "It is the responsibility of the department whenever possible to", after "standardized" deleted "application, license, and other", and after "forms" inserted "and processes to be" and in second sentence after "is to" inserted "streamline processes, expedite services" and near end after "waste, and" deleted "the use of out-of-date forms and" and after "facilitate" deleted "automated printing and"; and made minor changes in style. Amendment effective July 1, 2005.

37-1-105. Reporting disciplinary actions against licensees.

Compiler's Comments

2005 Amendment: Chapter 467 in first sentence near beginning after "all" deleted "licensing" and after "boards" substituted "and department programs" for "within the department"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 near middle of second sentence after "information" inserted "except pursuant to 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

37-1-106. Biennial report.

Compiler's Comments

1993 Amendment: Chapter 349 in last sentence, after "shall", substituted "submit the report to the office of budget and program planning as a part of the information required by 17-7-111" for "provide a copy of the report to the governor and, as provided in 5-11-210, to the legislature".

1991 Amendment: Inserted last sentence requiring Department to provide a copy of the report to the Governor and Legislature. Amendment effective March 20, 1991.

1983 Amendment: Near middle of section, before "The biennial report" deleted "In addition to the information prescribed by the governor under 2-7-102".

37-1-107. Joint meetings — department duties.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 66, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 26, Ch. 11, L. 2007, provided: "[This act] is effective July 1, 2007."

37-1-108. Rules governing active supervision.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 45, L. 2021, repealed sec. 8, Ch. 322, L. 2017, which terminated this section July 1, 2021. Effective March 1, 2021.

Effective Date: Section 7, Ch. 322, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

Termination: Section 8, Ch. 322, L. 2017, provided: "[This act] terminates July 1, 2021."

Preamble: The preamble attached to Ch. 322, L. 2017, provided: "WHEREAS, in 2015 the U.S. Supreme Court held in North Carolina State Board of Dental Examiners v. the Federal Trade Commission that members of state licensing boards on which a controlling number of decisionmakers are active market participants in the regulated profession are immune from federal antitrust liability for anticompetitive conduct as state actors only if the challenged restraint is clearly articulated and expressed as state policy and the state has and exercises active supervision over those types of board actions; and

WHEREAS, Montana's professional and occupational licensing board members include active market participants, and the Legislature intends to ensure that Montana law provides for the active supervision of boards as required by the U.S. Supreme Court decision for purposes of state action antitrust immunity; and

WHEREAS, this legislation seeks to continue to rely on the expertise provided by practicing members of the profession to regulate the profession and affirmatively chooses to afford a state action defense and thereby avoid personal legal liability for licensing board members."

37-1-109. Cease and desist — injunction — criminal penalties.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

37-1-121. Duties of commissioner — definitions.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 45, L. 2021, repealed sec. 8, Ch. 322, L. 2017, which terminated the 2017 amendments to this section July 1, 2021. Effective March 1, 2021.

2017 Amendment: Chapter 322 inserted (1)(d) concerning oversight and supervision of board duties and authority; inserted (2) concerning liability for claims resulting from department disapproval or modification; inserted (3) providing definitions; and made minor changes in style. Amendment effective May 4, 2017, and terminates July 1, 2021.

Preamble: The preamble attached to Ch. 322, L. 2017, provided: "WHEREAS, in 2015 the U.S. Supreme Court held in North Carolina State Board of Dental Examiners v. the Federal Trade Commission that members of state licensing boards on which a controlling number of decisionmakers are active market participants in the regulated profession are immune from federal antitrust liability for anticompetitive conduct as state actors only if the challenged restraint is clearly articulated and expressed as state policy and the state has and exercises active supervision over those types of board actions; and

WHEREAS, Montana's professional and occupational licensing board members include active market participants, and the Legislature intends to ensure that Montana law provides for the active supervision of boards as required by the U.S. Supreme Court decision for purposes of state action antitrust immunity; and

WHEREAS, this legislation seeks to continue to rely on the expertise provided by practicing members of the profession to regulate the profession and affirmatively chooses to afford a state action defense and thereby avoid personal legal liability for licensing board members."

2005 Amendment: Chapter 467 in (1) in first sentence after "hearings" deleted "before each board within the department" and after "board" inserted "or department program"; in (2) at beginning of first sentence inserted "establish the qualifications of and", in second sentence after "authority to" inserted "establish the qualifications of" and after "hire" inserted "or terminate", and inserted third sentence requiring the department to consult with the boards regarding recommendations for qualifications for executive or executive director positions; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in introductory clause substituted "commissioner of labor and industry" for "director of commerce"; at end of (3) substituted "commissioner" for "director"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 429 in (1), in first sentence after "impartial", substituted "hearing examiner" for "legal counsel" and in second sentence substituted "The hearing examiner shall conduct hearings" for "The legal counsel appointed shall see that hearings are conducted"; deleted former (2) that read: "(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation"; in (2), after "administrative", inserted "legal"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: At beginning of (1) inserted "at the request of a party" and near end of first sentence of (1), before "hearing", inserted "contested case".

1981 Amendment: Substituted "director of commerce" for "director of professional and occupational licensing" in the introductory clause.

Case Notes

No Error by District Court in Affirming Final Agency Decision: The petitioner sought licensure as a clinical psychologist and was denied by the Board of Psychologists because he did not meet the educational requirements. The petitioner challenged the board's decision and requested a hearing. The hearing officer found in the petitioner's favor and recommended licensure. The board rejected the hearing officer's findings and again denied licensure. The petitioner sought judicial review of the board's decision and the District Court held in the board's favor. The Supreme Court affirmed and determined that the hearing officer's finding was based on a misinterpretation of the board's rules and was not supported by substantial competent evidence. Mayer v. Bd. of Psychologists et. al., 2014 MT 85, 374 Mont. 364, 321 P.3d 819.

Attorney General's Opinions

Construction of Inconsistent Statutes: Statutes relating to the Board of Public Accountants, contained in Title 37, ch. 50, appear to have been amended by implication by the Executive Reorganization Act of 1971, now codified as part of Titles 2, 37, and 39, thereby transferring the duties specified in 37-1-101 and 37-1-121 from the Board of Public Accountants to the Department of Professional and Occupational Licensing (now Department of Labor and Industry) and the director thereof. Where two acts of the Legislature are inconsistent on the same subject, the prior statute is to be treated as repealed by the subsequent statute. 35 A.G. Op. 58 (1974).

37-1-122. Active supervision — rebuttable presumption — reconsideration.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 45, L. 2021, repealed sec. 8, Ch. 322, L. 2017, which terminated this section July 1, 2021. Effective March 1, 2021.

Effective Date: Section 7, Ch. 322, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

Termination: Section 8, Ch. 322, L. 2017, provided: "[This act] terminates July 1, 2021."

Preamble: The preamble attached to Ch. 322, L. 2017, provided: "WHEREAS, in 2015 the U.S. Supreme Court held in North Carolina State Board of Dental Examiners v. the Federal Trade Commission that members of state licensing boards on which a controlling number of decisionmakers are active market participants in the regulated profession are immune from federal antitrust liability for anticompetitive conduct as state actors only if the challenged restraint is clearly articulated and expressed as state policy and the state has and exercises active supervision over those types of board actions; and

WHEREAS, Montana's professional and occupational licensing board members include active market participants, and the Legislature intends to ensure that Montana law provides for the active supervision of boards as required by the U.S. Supreme Court decision for purposes of state action antitrust immunity; and

WHEREAS, this legislation seeks to continue to rely on the expertise provided by practicing members of the profession to regulate the profession and affirmatively chooses to afford a state action defense and thereby avoid personal legal liability for licensing board members."

37-1-123. Appointment — qualifications — terms.

Compiler's Comments

Effective Date: Section 48, Ch. 620, L. 2023, provided: "[This act] is effective July 1, 2023."

Saving Clauses: Section 40, Ch. 620, L. 2023, a saving clause, provided: "(1) To the extent that [section 1] [37-1-123] applies to board member term length and the number of terms for which a board member may be appointed, [section 1] [37-1-123] solely applies to appointments made on or after [the effective date of this act] [July 1, 2023].

(2) Nothing in [sections 7, 8, 9, 13, 17, 26, 27, 28, 29, and 32] [amendments to 2-15-1732, 2-15-17-33, 2-15-1734, 2-15-1738, 2-15-1742, 2-15-1756, 2-15-1757, 2-15-1758, 2-15-1761, and 2-15-1765] reduces the term, authority, or obligations of a board member who was appointed before [the effective date of this act] [July 1, 2023]. Elimination of a board position occurs at the earlier of:

(a) the resignation of the first board member who meets the qualifications of the eliminated position; or

(b) the ending of the appointed term of the first board member who meets the qualifications of the eliminated position.

(3) Staggering of board member terms must be effectuated during the appointment process by the governor designating the term start and end dates. The governor shall, as closely as possible, designate term start and end dates to appoint one-quarter of each board each calendar year."

Section 47, Ch. 620, L. 2023, was a saving clause.

37-1-124. Board organization — meetings — compensation — department allocation.

Compiler's Comments

Effective Date: Section 48, Ch. 620, L. 2023, provided: "[This act] is effective July 1, 2023."

Saving Clause: Section 47, Ch. 620, L. 2023, was a saving clause.

37-1-130. Definitions.

Compiler's Comments

2007 Amendment: Chapter 502 in definition of expired license after "period of" increased 45 days to 46 days; in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendment: Chapter 467 in introductory clause after "part" substituted "the following definitions apply" for ""board" means each board in this title"; inserted definition of administrative fee; in definition of board at beginning inserted ""Board" means a licensing board created under Title 2, chapter 15", after "that is" substituted "administratively attached" for "allocated", and after "department" substituted "as provided in 2-15-121" for "of labor and industry"; and inserted definitions of board fee, department, department program, expired license, lapsed license, license, and terminated license. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 at end after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

37-1-131. Duties of boards — quorum required.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 45, L. 2021, repealed sec. 8, Ch. 322, L. 2017, which terminated the 2017 amendments to this section July 1, 2021. Effective March 1, 2021.

2017 Amendment: Chapter 322 in (1) at beginning inserted introductory clause concerning active supervision of the state; in (4) inserted "under the active supervision of the state as described in 37-1-121(1)(d)"; in (4)(d) at beginning deleted "A board may, at the board's discretion"; and made minor changes in style. Amendment effective May 4, 2017, and terminates July 1, 2021.

Preamble: The preamble attached to Ch. 322, L. 2017, provided: "WHEREAS, in 2015 the U.S. Supreme Court held in North Carolina State Board of Dental Examiners v. the Federal Trade Commission that members of state licensing boards on which a controlling number of decisionmakers are active market participants in the regulated profession are immune from federal antitrust liability for anticompetitive conduct as state actors only if the challenged restraint is clearly articulated and expressed as state policy and the state has and exercises active supervision over those types of board actions; and

WHEREAS, Montana's professional and occupational licensing board members include active market participants, and the Legislature intends to ensure that Montana law provides for the active supervision of boards as required by the U.S. Supreme Court decision for purposes of state action antitrust immunity; and

WHEREAS, this legislation seeks to continue to rely on the expertise provided by practicing members of the profession to regulate the profession and affirmatively chooses to afford a state action defense and thereby avoid personal legal liability for licensing board members."

2015 Amendment: Chapter 80 in (1)(b) at beginning inserted exception clause; deleted former (4)(d) that read: "(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement"; and made minor changes in style. Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

2011 Amendments — Composite Section: Chapter 51 in (1)(a)(i) inserted "adopt and enforce"; inserted (1)(a)(ii) regarding application of standards and rules referred to in subsection (1)(a)(i); and made minor changes in style. Amendment effective October 1, 2011.

Chapter 122 inserted (1)(d) regarding disciplinary action of a person in a medical assistance program; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendments — Composite Section: Chapter 225 inserted (6) concerning public notice; and made minor changes in style. Amendment effective January 1, 2009.

Chapter 502 inserted (3) requiring licensees reactivating expired licenses to prove they have met continuing education or certification requirements; in (4)(d) in first sentence after "37-1-306" inserted "or require continued state, regional, or national certification for licensure", in second sentence in two places after "education" inserted "or continued state, regional, or national certification", at beginning inserted exception clause, and after "audit or" substituted "require proof of" for "verify", and in third sentence near middle after "audits" inserted "after the lapsed date" and at end after "requirement" deleted "after the renewal period closes"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 6, Ch. 225, L. 2007, was a severability clause.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendments — Composite Section: Chapter 416 in (3) at end after "chapter 71" deleted "or 72". Amendment effective July 1, 2005.

Chapter 467 at beginning of introductory clause inserted "A quorum of"; inserted (7) allowing the board or the department to establish applicant qualifications, determine license examination requirements, conduct examinations, and require continuing education; inserted (8) allowing the board in its discretion to request the applicant to make a personal appearance before the board for nonroutine license applications; and made minor changes in style. Amendment effective July 1, 2005.

Severability: Section 42, Ch. 416, L. 2005, was a severability clause.

Effective Date — Applicability: Section 43, Ch. 416, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to occupational diseases that occur on or after July 1, 2005."

2001 Amendment: Chapter 492 inserted (6) requiring quorum to conduct business. Amendment effective October 1, 2001.

1995 Amendment: Chapter 429 in second sentence in (2) substituted "a hearing examiner" for "legal counsel"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 619 inserted (3) requiring board to suspend, revoke, or deny license for fraud or abuse of workers' compensation system. Amendment effective July 1, 1993.

Severability: Section 29, Ch. 619, L. 1993, was a severability clause.

1991 Amendment: Inserted (4) requiring a professional and occupational licensing board to consult with Department prior to initiation of a program expansion.

1985 Amendment: Near end of (2) after "counsel", substituted "when required" for "appointed".

Case Notes

Claim Against Board of Dentistry Not Barred by Res Judicata: Res judicata precludes issues that were litigated or could have been litigated in a previous action. The plaintiff, a denturist association, challenged a rule of the Board of Dentistry that was previously litigated in Wiser v. St., 2006 MT 20, 331 Mont. 28, 129 P.3d 133 (Wiser I), and Wiser v. Mont. Bd. of Dentistry, 2011 MT 56, 360 Mont. 1, 251 P.3d 675 (Wiser II). Applying res judicata, the District Court barred the claims previously litigated in Wiser I and Wiser II. On appeal, the Supreme Court affirmed the District Court's grant of summary judgment on those claims. However, the Supreme Court also reversed in part, holding that the District Court erred in its application of res judicata to the plaintiffs' claim of systemic discrimination under 37-1-131(1)(a)(ii) because the statute was not enacted at the time of the prior proceedings, and remanded this claim for further proceedings. Denturist Ass'n of Mont. v. St., 2016 MT 119, 383 Mont. 391, 372 P.3d 466.

Board Increase in Penalty for Unprofessional Psychiatrist Conduct Affirmed: Following charges against a psychiatrist for unprofessional conduct, the Board of Medical Examiners considered the entire record and decided to exceed sanctions proposed by the hearings examiner by revoking the psychiatrist's license. The District Court affirmed the Board's action, and on appeal, the Supreme Court also affirmed. Having reviewed the complete record, the Board's increase in the proposed penalty was statutorily authorized and was not arbitrary or capricious. Thus, the Board did not commit an error of law by imposing the increase in penalty. Munn v. Bd. of Medical Examiners, 2005 MT 303, 329 M 401, 124 P3d 1123 (2005), distinguishing St. v. Shodair Hosp., 273 M 155, 902 P2d 21 (1995).

Revocation of Real Estate Broker's License — No Denial of Rights at Administrative Hearing — Hearing Examiner and Board Attorney as Deputy Attorneys General: A hearing examiner recommended that Sorini's real estate broker's license be revoked for violations of 37-51-321. On appeal, Sorini argued that she was denied her rights at the administrative hearing because both the hearing examiner and the attorney for the Board of Realty Regulation were deputies in the Attorney General's office; however, she failed to submit any proof to support this allegation. The Supreme Court noted that 2-4-611 establishes the manner in which a party may file an affidavit for disqualification of a hearing examiner, holding that in the absence of an affidavit it was not proper to raise the issue on appeal. The court agreed that having a greater separation of prosecutorial and decisionmaking functions would eliminate an appearance of impropriety, but found nothing to warrant a reversal of the District Court. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Attorney General's Opinions

Interpretation of Plumber Licensing Statutes by Board of Plumbers — Licensing Authority Restricted by Statute — Intention of Legislature — Penalty Statute Inapplicable: The Board of Plumbers has the legal authority to interpret Title 37, ch. 69, and the interpretation by the Board must be given deference unless it is incorrect. In interpreting the plumbing licensing statutes, the intent of the Legislature must be determined, and if that intent can be understood from a plain reading of the statutes, there is no need to look further. The statutes as well as the statutory history clearly indicated that a plumber's license is required only for a person who is: (1) working in the field of plumbing in an incorporated city or town; (2) working in the field of plumbing in an area served by a public water supply or sewer system; or (3) working in the field of plumbing and connects or disconnects plumbing to or from a public water supply or sewer system, unless an exemption is granted. There is no penalty applicable to an unlicensed person for whom a license is not required by statute. 47 A.G. Op. 21 (1998).

Board of Dentistry Not to Reconsider Licensing Decisions of Board of Denturitry: Administrative agencies enjoy only those powers specifically conferred upon them by statute. They possess no common-law powers, and implied powers are limited only to those necessary for the effective exercise and discharge of powers and duties expressly conferred. Therefore, when the Board of Denturitry had no power to reconsider its licensing decisions, the Board of Dentistry, having succeeded to the functions of the Board of Denturitry, may not reconsider a prior decision of the Board of Denturitry to issue a denturist's license. 43 A.G. Op. 33 (1989).

Construction of Inconsistent Statutes: Statutes relating to the Board of Public Accountants, contained in Title 37, ch. 50, appear to have been amended by implication by the Executive Reorganization Act of 1971, now codified as part of Titles 2, 37, and 39, thereby transferring the duties specified in 37-1-101 and 37-1-121 from the Board of Public Accountants to the Department of Professional and Occupational Licensing (now Department of Labor and Industry) and the director thereof. Where two acts of the Legislature are inconsistent on the same subject, the prior statute is to be treated as repealed by the subsequent statute. 35 A.G. Op. 58 (1974).

37-1-132. Nominees for appointment to licensing and regulatory boards.

Compiler's Comments

Preamble: The preamble to SB 312 (Ch. 244, L. 1981) read: "WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

37-1-133. Board members' compensation and expenses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 37, Ch. 620, L. 2023. Amendment effective July 1, 2023.

Saving Clause: Section 47, Ch. 620, L. 2023, was a saving clause.

1983 Amendments: Chapter 123 substituted, at end of second sentence, "2-18-502" for "2-18-501, for each day in which 6 or more hours are spent on official board business".

Chapter 672 increased per diem from $25 to $50.

Preamble: The preamble to SB 463 (Ch. 474, L. 1981) read: "WHEREAS, during its sunset reviews of licensing and regulatory boards the Legislative Audit Committee noted that compensation and travel expenses for the boards vary considerably from board to board; and

WHEREAS, the various boards have very similar duties and responsibilities.

THEREFORE, it is the intent of this act to provide for the payment of uniform compensation and travel expenses for members of state licensing and regulatory boards."

37-1-134. Boards — costs.

Compiler's Comments

2015 Amendment: Chapter 187 in (1) substituted first three sentences regarding board fees, amount needed, consideration of prior revenues and expenses, and cap on cash balances for "Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs", in middle after "standardized" inserted "administrative", and after "shall collect" deleted "administrative"; inserted (2) regarding rules for fees; and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendment: Chapter 467 in first sentence after "set" inserted "board", after "fees" deleted "reasonably", after "area" inserted "that are commensurate with", and after "costs" inserted "for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs", in fourth sentence after "law" deleted "each board within", after "establish" inserted "standardized", and after "fees for" substituted "administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program" for "program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education", at beginning of sixth sentence substituted "Administrative service" for "Board", after "specific" inserted "board or", after "distributed to" inserted "board or", and at end after "determined by the" substituted "department" for "board", and at beginning of seventh sentence after "Each board" inserted "and department program"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble to Ch. 345, L. 1981, provided: "WHEREAS, most fees set by professional and occupational licensing boards are specified or limited in amount by law; and

WHEREAS, such limitations are not necessarily serving the purpose intended in that the fees are not related to costs incurred and board revenues are insufficient in some cases and excessive in others.

THEREFORE, it is the intent of this act to authorize and require such licensing boards to set fees reasonably related to the costs of administering the various programs under their jurisdiction."

Statement of Intent: The statement of intent attached to SB 412 (Ch. 345, L. 1981) provided: "A statement of intent is required for Senate Bill 412 because it grants licensing boards within the Department of Professional and Occupational Licensing the authority to set fees.

Presently fees charged by most licensing boards are set by law. Wherever changed circumstances require a change in fees legislation is required. Each session several bills are introduced to modify board fees. By allowing boards to set their own fees, flexibility is provided the boards to meet changing circumstances. At the present time, fees set by law are not based upon actual costs incurred by licensing boards in carrying out their various functions.

It is the intent of the Legislature that fees set by licensing boards be reasonably related to the costs of the respective programs. "Programs" of the licensing boards are intended to be such areas of responsibility as applications, examinations, renewals, and reciprocity. "Reasonably related" is intended to mean that the department generally breaks down the costs associated with the various programs and sets each fee at a level to cover these costs and the costs of maintaining the ongoing operations of the board. "Reasonably related" does not mean the department is required to maintain an exact system of actual costs, but rather means the department should generally allocate costs of the program equitably among the various fee categories."

Administrative Rules

ARM 24.101.403 Standardized fees.
ARM 24.111.401 Alternative health care — fees.
ARM 24.114.401 Architects — fee schedule.
ARM 24.118.402 Athletic trainers — fee schedule.
ARM 24.121.401 Barbers and cosmetologists — fees.
ARM 24.126.401 Chiropractors — fee schedule.
ARM 24.129.401 Clinical laboratory science practitioners — fees.
ARM 24.138.3215 Anesthesia — fee schedule.
ARM 24.141.405 Electricians — fee schedule.
ARM 24.147.401 Funeral service — fee schedule.
ARM 24.155.401 Massage therapists — fee schedule.
ARM 24.156.409 Acupuncturists — fee schedule.
ARM 24.156.409 Nutritionists — fee schedule.
ARM 24.156.409 Physicians — fee schedule.
ARM 24.156.409 Podiatrists — fee schedule.
ARM 24.159.401 Nurses — fees.
ARM 24.162.420 Nursing home administrators — fee schedule.
ARM 24.165.401 Occupational therapists — fees.
ARM 24.168.401 Optometrists — fee schedule.
ARM 24.171.401 Fees for outfitter, operations plan, and professional guide.
ARM 24.174.401 Pharmacy — fee schedule.
ARM 24.177.401 Physical therapy examiners — fees.
ARM 24.180.401 Plumbers — fee schedule.
ARM 24.183.404 Professional engineers and land surveyors — fee schedule.
ARM 24.189.401 Psychologists — fee schedule.
ARM 24.201.410 Public accountants — fee schedule.
ARM 24.204.401 Radiologic technologists — licensing — fee schedule.
ARM 24.207.401 Real estate appraisers — fees.
ARM 24.210.401 Realtors — fee schedule.
ARM 24.213.401 Respiratory care practitioners — fee schedule.
ARM 24.219.401 Social workers — fee schedule.
ARM 24.222.401 Speech-language pathologists — fees.
ARM 24.225.401 Veterinarians — fee schedule.
ARM 36.21.415 Water well contractors — fee schedule.

Collateral References

Licensed to Bill: How Licensing Boards Function With Government Endorsement, Mont. Leg. Serv. Div. (2015).

Fee-Financed Government: Issues Raised by Licensing Boards and Other Agencies Before the 2013-2014 Economic Affairs Interim Committee, Mont. Leg. Serv. Div. (2014).

37-1-135. Licensing investigation and review — record access.

Administrative Rules

ARM 24.210.611 Application for license — realty salesperson and broker.

37-1-136. Disciplinary authority of boards — injunctions.

Compiler's Comments

2021 Amendment: Chapter 576 in (4) at end substituted "Title 16, chapter 12, part 5" for "Title 50, chapter 46". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

2007 Amendment: Chapter 225 inserted (5) concerning public notice. Amendment effective January 1, 2009.

Severability: Section 6, Ch. 225, L. 2007, was a severability clause.

2004 Amendment by Initiative: Initiative Measure No. 148, proposed by initiative petition and approved at the general election held November 2, 2004, inserted (4) prohibiting action against a person in compliance with Title 50, chapter 46. Amendment effective November 2, 2004.

Severability: Section 18, I.M. No. 148, was a severability clause.

2003 Amendment: Chapter 271 in (1) at beginning inserted "Subject to 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1981 Preamble: The preamble to Ch. 246, L. 1981, provided: "WHEREAS, during its sunset review of licensing boards, the Legislative Audit Committee noted that disciplinary authority of some boards over licensees is not specified in the law and that consequently some boards are hesitant to take disciplinary action against licensees.

THEREFORE, it is the intent of this act to specify the disciplinary authority of the boards allocated to the Department of Professional and Occupational Licensing."

Statement of Intent: The statement of intent attached to SB 407 (Ch. 246, L. 1981) provided: "SB 407 requires a statement of intent because it grants each licensing board allocated to the Department of Professional and Occupational Licensing the authority to adopt specifying grounds for disciplinary action and the type of action that may be taken.

Each board adopting new substantive or procedural rules under SB 407 is to specify both the grounds upon which each type of disciplinary action may be taken, and the procedure to be used for each action. Each board using a disciplinary action not specified in subsections (1)(a) through (e) but considered proper under (1)(f) must also state in the rule the grounds upon which disciplinary action may be taken and the applicable procedure.

No rule shall specify disciplinary action for failure to renew any license or certificate, pay any fee or participate in any program of continuing education unless the renewal, fee or participation is required by statute.

Rules authorized by both SB 407 and by other provisions of law and previously adopted under such other provisions need not be readopted under SB 407."

Administrative Rules

ARM 24.138.2301 Unprofessional conduct for dentists and dental hygienists.
ARM 24.138.2302 Unprofessional conduct for denturists.
ARM 24.201.2401 Public accountants — anonymous complaints.
ARM 24.225.2401 Veterinarians — complaint procedure.

Case Notes

Board Action in Seeking Injunction — No Intentional Interference With Business: The Board of Dentistry received a complaint from a dentist who claimed Kandarian was practicing dentistry without a license by performing temporomandibular joint disfunction evaluations. The Board discussed the complaint in an open meeting, releasing the contents of the complaint to the press at the same time, and subsequently filed for an injunction seeking to enjoin Kandarian from the practice. The Board's action was not tortious but rather was authorized by statute. Thus, Kandarian's claim that the Board negligently released the contents of its complaint, negligently filed suit, and intentionally interfered with his business was properly dismissed by summary judgment. St. v. Kandarian, 268 M 408, 886 P2d 954, 51 St. Rep. 1381 (1994).

Revocation of Real Estate Broker's License — No Denial of Rights at Administrative Hearing — Hearing Examiner and Board Attorney as Deputy Attorneys General: A hearing examiner recommended that Sorini's real estate broker's license be revoked for violations of 37-51-321. On appeal, Sorini argued that she was denied her rights at the administrative hearing because both the hearing examiner and the attorney for the Board of Realty Regulation were deputies in the Attorney General's office; however, she failed to submit any proof to support this allegation. The Supreme Court noted that 2-4-611 establishes the manner in which a party may file an affidavit for disqualification of a hearing examiner, holding that in the absence of an affidavit it was not proper to raise the issue on appeal. The court agreed that having a greater separation of prosecutorial and decisionmaking functions would eliminate an appearance of impropriety, but found nothing to warrant a reversal of the District Court. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) near middle after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

37-1-138. Protection of professional licenses for activated military reservists — rulemaking authority — definitions.

Compiler's Comments

Effective Date: Section 62, Ch. 271, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

37-1-139. Definition — joint duties of boards — sexual offender evaluator license endorsement — rulemaking.

Compiler's Comments

Effective Date: Section 5, Ch. 481, L. 2021, provided: "[This act] is effective January 1, 2022."

37-1-141. License renewal — lapse — expiration — termination.

Compiler's Comments

2015 Amendment: Chapter 80 in (2) inserted "as provided by 37-1-306 and 37-1-420". Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

2005 Amendment: Chapter 467 inserted (1) through (7) regarding license renewals; in (8) near beginning of first sentence after "rule" substituted "an" for "a lapsed" and after "within" substituted "2" for "3" and in second sentence after "not be" substituted "reactivated" for "reinstated" and at end after "obtained" deleted "by passing a qualifying examination and paying the appropriate fee"; inserted (9) granting the licensing entity jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which a license lapsed; inserted (10) providing that this section may not be interpreted to conflict with 37-1-138; and made minor changes in style. Amendment effective July 1, 2005.

Administrative Rules

ARM 24.101.413 Renewal dates and requirements.
ARM 24.114.401 Fee schedule.
ARM 24.121.2101 Continuing education — instructors.
ARM 24.126.2105 Chiropractors — approved continuing education.
ARM 24.225.401 Fee schedule.

Case Notes

Jurisdiction Over Lapsed License: In 1987, Gilpin was convicted on two counts of sexual assault. In 1990, Gilpin's nursing license lapsed for failure to renew. In 1990, the Board of Nursing sought to revoke Gilpin's nursing license. The parties submitted an agreed statement of facts to a hearing examiner who submitted findings, conclusions, and a recommendation to the Board. The Board heard Gilpin's objections orally and in writing, adopted the hearing examiner's recommendations, and revoked the license. Gilpin then appealed to the District Court, which heard the parties' arguments and issued an order affirming the revocation of the license. The Supreme Court held that because the Board has power to reinstate a nursing license 3 years after it lapses (see 2005 amendment), the Board retains jurisdiction over a license 3 years after it lapses (see 2005 amendment). Thus, the Board did not lose jurisdiction over Gilpin's license and had jurisdiction to revoke the license. The Supreme Court also held that the stipulation of facts was a sufficient factual basis to revoke the license and that Gilpin was not entitled to any hearings in addition to those that he was given. Gilpin v. Bd. of Nursing, 254 M 308, 837 P2d 1342, 49 St. Rep. 831 (1992).

37-1-145. Military training or experience to satisfy licensing or certification requirements — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 390, L. 2023. Amendment effective July 1, 2024.

2021 Amendment: See 2021 Session Law for amendment made by sec. 67, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 4, Ch. 310, L. 2013, and sec. 3, Ch. 320, L. 2013, provided: "[This act] is effective on passage and approval." Approved April 26, 2013.

Administrative Rules

ARM 24.114.411 Board of architects and landscape architects — military training or experience.

ARM 24.126.502 Board of chiropractors — military training or experience.

ARM 24.141.507 State electrical board — military training or experience.

ARM 24.154.403 Licensed addiction counselors program — military training or experience.

ARM 24.162.502 Board of nursing home administrators — military training or experience.

ARM 24.165.406 Board of occupational therapy practice — military training or experience.

ARM 24.180.502 Board of plumbers — military training or experience.

37-1-146. Activated military personnel exemptions.

Compiler's Comments

Effective Date: Section 7, Ch. 390, L. 2023, provided: "[This act] is effective July 1, 2024."

37-1-147. Licensing and certification reciprocity for military members, military spouses, and veterans — requirements.

Compiler's Comments

Effective Date: Section 7, Ch. 390, L. 2023, provided: "[This act] is effective July 1, 2024."

Part 2
Licensure of Criminal Offenders

37-1-201. Purpose.

Compiler's Comments

2007 Amendment: Chapter 389 inserted third sentence regarding an applicant's criminal background; and made minor changes in style. Amendment effective October 1, 2007.

Applicability: Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

37-1-203. Conviction not a sole basis for denial.

Case Notes

Criminal Conviction Not Conclusive Evidence of Unprofessional Conduct Sufficient to Warrant Revocation of Mortician's License: A criminal conviction is not conclusive evidence of unprofessional conduct and does not constitute sufficient grounds for revocation of a mortician's license. Because this section was cross-referenced in the license revocation statute, 37-19-311 (now repealed), before revoking a mortician's license, the Board of Funeral Service was required to determine whether a mortician's criminal conviction related to and affected the public health, safety, and welfare as it applied to the practice of mortuary science and whether the mortician had been sufficiently rehabilitated. Ulrich v. State ex rel. Bd. of Funeral Service, 1998 MT 196, 289 M 407, 961 P2d 126, 55 St. Rep. 822 (1998), distinguishing Erickson v. State ex rel. Bd. of Medical Examiners, 282 M 367, 938 P2d 625 (1997).

Petition for Reinstatement of License Conditioned Upon Completion of Court-Imposed Sentence Unlawful: Ulrich petitioned for reinstatement of his mortician's license, which was revoked by the Board of Funeral Service on grounds of unprofessional conduct following Ulrich's conviction of criminal charges based on his conduct as a real estate agent. The Board ordered that Ulrich could not petition for reinstatement until all terms of his court-imposed criminal sentence, including full restitution, had been completed. The Board argued that under 37-1-205, the order was lawful because completion of the sentence was evidence of restitution. However, completion of a sentence is not the only method by which an applicant is entitled to demonstrate sufficient rehabilitation. On appeal, the Supreme Court held that an applicant whose license is denied or revoked because of a criminal conviction pursuant to 37-19-311 (now repealed) is entitled to apply for reinstatement and a full hearing pursuant to this section. The order denying a petition for reinstatement until all conditions of a criminal sentence are met was unlawful. Ulrich v. State ex rel. Bd. of Funeral Service, 1998 MT 196, 289 M 407, 961 P2d 126, 55 St. Rep. 822 (1998).

Rejection of Hearings Examiner's Findings and Revocation of License — Abuse of Discretion: Ulrich sought reinstatement of his mortician's license, which was revoked by the Board of Funeral Service on grounds of unprofessional conduct following Ulrich's conviction of criminal charges based on his conduct as a real estate agent. The Board rejected the findings of a hearings examiner, who recommended reinstatement, on grounds that licensing Ulrich would affect the public's health, safety, and welfare. However, the hearings examiner's conclusions were supported by competent, substantial evidence of Ulrich's remorse, attempts to provide ongoing restitution payments, and rehabilitation. It was an abuse of discretion in violation of 2-4-621(3) for the Board to reject the hearings examiner's findings and revoke Ulrich's license to practice mortuary science. Ulrich v. State ex rel. Bd. of Funeral Service, 1998 MT 196, 289 M 407, 961 P2d 126, 55 St. Rep. 822 (1998).

What Section Applicable to License Revocation: Erickson asserted that the Montana State Board of Medical Examiners, pursuant to this section, needed to ascertain whether Erickson's conviction of Medicaid fraud related to the public health, welfare, or safety before considering whether to revoke Erickson's medical license. The Supreme Court held that 37-3-323 sets out the procedure to be applied when the Board revokes or suspends a medical license. A person who has had a license revoked under 37-3-323 as a result of a criminal conviction is entitled to consideration under this section when seeking a new license following rehabilitation. This section does not apply to the revocation of a license. Erickson v. St., 282 M 367, 938 P2d 625, 54 St. Rep. 395 (1997), overruling Mills v. Comm'r of Ins., 226 M 387, 736 P2d 102 (1987), and Gilpin v. Bd. of Nursing, 254 M 308, 837 P2d 1342 (1992).

Crime of Sexual Assault as Unprofessional Conduct and Crime Relating to Public Health, Welfare, and Safety — Lack of Rehabilitation: Gilpin was convicted of two counts of sexual assault. After his nursing license was revoked, Gilpin appealed, claiming that there was insufficient connection between the reason for his criminal conviction and the practice of nursing to warrant revocation of the license. The Supreme Court affirmed the hearing examiner's finding that the sexual assaults related to the public health, welfare, and safety and that Gilpin was guilty of unprofessional conduct. Gilpin v. Bd. of Nursing, 254 M 308, 837 P2d 1342, 49 St. Rep. 831 (1992), overruled in Erickson v. St., 282 M 367, 938 P2d 625, 54 St. Rep. 395 (1997).

License Revocation for Felony Theft: Plaintiff's occupational license as a life insurance agent was revoked solely because she was convicted of felony theft. No effort was made to determine whether the conviction related to the public health, welfare, and safety as it applied to the practice of her occupation. The Supreme Court held that the mere finding that a licensee was convicted of a felony involving moral turpitude is not a sufficient basis upon which to hold that the conviction is related to the public health, welfare, or safety as it relates to the licensed occupation. Mills v. Comm'r of Ins., 226 M 387, 736 P2d 102, 44 St. Rep. 743 (1987), overruled in Erickson v. St., 282 M 367, 938 P2d 625, 54 St. Rep. 395 (1997).

37-1-204. Statement of reasons for denial.

Case Notes

License Revocation for Felony Theft: Plaintiff's occupational license as a life insurance agent was revoked solely because she was convicted of felony theft. No effort was made to determine whether the conviction related to the public health, welfare, and safety as it applied to the practice of her occupation. The Supreme Court held that the mere finding that a licensee was convicted of a felony involving moral turpitude is not a sufficient basis upon which to hold that the conviction is related to the public health, welfare, or safety as it relates to the licensed occupation. Mills v. Comm'r of Ins., 226 M 387, 736 P2d 102, 44 St. Rep. 743 (1987), overruled in Erickson v. St., 282 M 367, 938 P2d 625, 54 St. Rep. 395 (1997).

37-1-205. Licensure on completion of supervision.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Petition for Reinstatement of License Conditioned Upon Completion of Court-Imposed Sentence Unlawful: Ulrich petitioned for reinstatement of his mortician's license, which was revoked by the Board of Funeral Service on grounds of unprofessional conduct following Ulrich's conviction of criminal charges based on his conduct as a real estate agent. The Board ordered that Ulrich could not petition for reinstatement until all terms of his court-imposed criminal sentence, including full restitution, had been completed. The Board argued that under this section, the order was lawful because completion of the sentence was evidence of restitution. However, completion of a sentence is not the only method by which an applicant is entitled to demonstrate sufficient rehabilitation. On appeal, the Supreme Court held that an applicant whose license is denied or revoked because of a criminal conviction pursuant to 37-19-311 (now repealed) is entitled to apply for reinstatement and a full hearing pursuant to 37-1-203. The order denying a petition for reinstatement until all conditions of a criminal sentence are met was unlawful. Ulrich v. State ex rel. Bd. of Funeral Service, 1998 MT 196, 289 M 407, 961 P2d 126, 55 St. Rep. 822 (1998).

Part 3

Uniform Professional Licensing and Regulation Procedures

Part Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 429, L. 1995, provided: "A statement of intent is necessary for this bill because, although the bill deletes numerous grants of rulemaking authority in numerous sections of Title 37, the bill contains a single section allowing professional and occupational licensing boards to adopt rules. The purpose of replacing the numerous rulemaking authority grants with a single grant, as is the purpose with the rest of the bill, is to standardize the law in an attempt to reduce the number of rules and reduce variations in the rules from occupation to occupation.

The legislature takes note of the large number of bills proposed by and affecting professional and occupational licensing boards in Montana. A uniform licensing and disciplinary process needs to be established to permit the department of commerce [now department of labor and industry] and administratively attached licensing boards to administer the professional and occupational regulatory programs in a manner that is responsive to the public's needs. The public interest will be served by establishing uniform administrative provisions for these regulated professions and occupations that are designed to reduce the number of statutes and rules and variations in statutes and rules between professions or occupations and to promote public awareness of and access to the regulation of professions and occupations. It is the intent of the legislature to strengthen and consolidate disciplinary and licensure procedures for the licensed professions and occupations by providing a uniform disciplinary, licensing, and regulatory act, with standardized procedures for regulation, the purpose of which is to assure the public of the adequacy of competence and conduct in the regulated professions and occupations.

The rules must provide for adequate due process for licensed persons involved in disciplinary proceedings."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Part Case Notes

Person Engaged in Acts Constituting Practice of Pharmacy Subject to Board Regulation and Injunctive Order: The defendant argued that he was not subject to regulation by the board of pharmacy with respect to his business, which was engaged in obtaining out-of-state drugs from unlicensed drug companies for individuals in Montana. The Supreme Court denied the defendant's motion for summary judgment and upheld the lower court's summary judgment in favor of the board, stating that engaging in acts that constitute the practice of pharmacy makes one subject to the board's regulatory powers and subject to injunctive orders. Bd. of Pharmacy v. Kennedy, 2010 MT 227, 358 Mont. 57, 243 P.3d 415.

Part Collateral References

Licensed to Bill: How Licensing Boards Function With Government Endorsement, Mont. Leg. Serv. Div. (2015).

Fee-Financed Government: Issues Raised by Licensing Boards and Other Agencies Before the 2013-2014 Economic Affairs Interim Committee, Mont. Leg. Serv. Div. (2014).

37-1-302. Definitions.

Compiler's Comments

2007 Amendment: Chapter 502 in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendment: Chapter 467 in definition of license at end after "occupation" deleted "regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in definition of department after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

37-1-303. Scope.

Compiler's Comments

2007 Amendment: Chapter 44 in third sentence after "specified in" substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

Case Notes

Administrative, Not Criminal, Sanctions Properly Imposed by Board of Outfitters Against Outfitter Who Hired Unlicensed Guide: Crismore hired an unlicensed guide. Pursuant to 37-1-312, the Board of Outfitters fined Crismore $1,000, placed him on probation for 18 months, and ordered him to complete remedial education. Crismore contended that the Board should have applied 37-47-344 (now repealed), which is the misdemeanor criminal statute that specifically applies to outfitters and guides and provides a maximum fine of $500. The Supreme Court found that Crismore's argument had no basis in law. The Board of Outfitters has no authority to conduct a criminal proceeding that may lead to a misdemeanor sentence under 37-47-344. That authority is vested in courts of limited jurisdiction. Rather, the Board has authority to enforce license regulations and conduct administrative contested case hearings pursuant to this section and therefore properly exercised its authority to sanction Crismore pursuant to 37-1-312. Crismore v. Bd. of Outfitters, 2005 MT 109, 327 M 71, 111 P3d 681 (2005).

37-1-304. Licensure of out-of-state applicants — reciprocity.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 35, Ch. 713, L. 2023. Amendment effective October 1, 2023.

The amendment to this section made by sec. 6, Ch. 590, L. 2023, was replaced by sec. 35, Ch. 713, L. 2023, a coordination section.

2019 Amendment: Chapter 83 in (1) near beginning substituted "shall" for "may"; and in (2) near end substituted "another state" for "the other state or states". Amendment effective March 20, 2019.

2011 Amendment: Chapter 100 in (2) in first sentence at beginning before "verification" substituted current text for "The license may not be issued until the board receives" and inserted second sentence regarding suspension of license. Amendment effective October 1, 2011.

1997 Amendment: Chapter 210 in (1)(a), after "equivalent to", inserted "or greater than"; inserted (3) regarding reciprocity agreements with other states; and made minor changes in style.

Administrative Rules

ARM 24.114.1404 Landscape architect licensure by endorsement.
ARM 24.121.603 Out-of-state applicants.
ARM 24.225.401 Fee schedule.

37-1-305. Temporary practice permits.

Compiler's Comments

2019 Amendment: Chapter 195 inserted (1)(b) concerning issuance of a temporary practice permit or issuance of a notice of defective application; in (1)(d) near end in two places substituted "permit" for "license"; in (2) inserted last sentence regarding the timeline for determination of meeting requirements; and made minor changes in style. Amendment effective October 1, 2019.

2011 Amendment: Chapter 100 in (1) in third sentence before "verification" substituted current text for "The permit may not be issued until the board receives" and inserted fourth sentence regarding suspension of license. Amendment effective October 1, 2011.

1999 Amendment: Chapter 203 in (2) at beginning of second sentence inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

37-1-306. Continuing education — certification — other qualifications for continued licensure — audit.

Compiler's Comments

2019 Amendment: Chapter 50 in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 80 in (1) after "board" deleted "or, for programs without a board, the department" and at end inserted "or continued state, regional, or national certification for licensure"; inserted (2), (3), and (4) regarding audit of licensees; inserted (5) regarding opportunity to cure noncompliance; and made minor changes in style. Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

2005 Amendment: Chapter 467 at beginning after "board" inserted "or, for programs without a board, the department". Amendment effective July 1, 2005.

Administrative Rules

ARM 24.121.2101 Continuing education — instructors.

ARM 24.126.2105 Chiropractors — approved continuing education.

37-1-307. Board authority.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 195 in (1)(e) after "license" inserted clause regarding timelines for granting or denying a license; and made minor changes in style. Amendment effective October 1, 2019.

Chapter 287 in (4)(a), (4)(b), and (4)(d) in two places, substituted "criminal record background report" for "criminal background check"; in (4)(a) in middle before "fingerprints" inserted "a full set of"; and in (4)(c) near beginning substituted "criminal record background check" for "criminal background check". Amendment effective May 3, 2019.

2011 Amendment: Chapter 100 in (1)(d) inserted second sentence regarding summary suspensions. Amendment effective October 1, 2011.

2007 Amendment: Chapter 389 in (2) near middle after "information" inserted "as defined in 44-5-103" and at end after "practice" inserted "but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5"; inserted (3) allowing a board to obtain criminal history record information; inserted (4) regarding fingerprinting, background check information, and payment of fees; and made minor changes in style. Amendment effective October 1, 2007.

Applicability: Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

2005 Amendment: Chapter 467 in (1)(b) at beginning of first sentence after "subpoenas" inserted "requiring the attendance of witnesses or the production of documents" and in second sentence after "complaint" substituted "and must be signed by a member" for "issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer"; deleted former (1)(d) that read: "(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 in (1)(e) in first sentence after "a licensee has violated" substituted "a particular statute, rule, or standard" for "a statute or rule" and inserted second and third sentences regarding screening panel; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 230 at end of (2) inserted "and regarding possible unlicensed practice". Amendment effective October 1, 1999.

1997 Amendment: Chapter 552 inserted (3) requiring each board to require a license applicant to provide the applicant's Social Security number and requiring the board to keep the number confidential except for Title IV-D purposes. Amendment effective July 1, 1997.

Contingent Termination — Request for Federal Exemptions: Section 104, Ch. 552, L. 1997, contained the following contingent termination provisions and order that the Department of Public Health and Human Services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer

required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 93] [50-15-403];

(e) [section 95] [61-5-107];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 93] [50-15-403, certification filed April 24, 1998];

(e) [section 95] [61-5-107];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(5) (a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a). [This exemption was received on December 8, 1997.]

(6) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate July 1, 1999.

(7) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement."

37-1-308. Unprofessional conduct — complaint — investigation — immunity — exceptions.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 7, Ch. 381, L. 2023. Amendment effective October 1, 2023.

The amendments to this section made by sec. 8, Ch. 376, L. 2023, and sec. 2, Ch. 381, L. 2023, were replaced by sec. 7, Ch. 381, L. 2023, a coordination section.

2001 Amendment: Chapter 492 in (1) in exception clause after "provided in" substituted "subsections (4) and (5)" for "subsection (3)"; inserted (5) regarding board member who believes statute, rule, or standard to have been violated; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 375 substituted present (3) precluding certain complaints by incarcerated persons for former (3) that read: "(3) A person may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while incarcerated under the legal custody of the department of corrections. If the department of corrections has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person incarcerated under the legal custody of the department of corrections, the department of corrections shall report the possible violation to the department for appropriate action under subsection (2)". Amendment effective July 1, 1999.

1997 Amendment: Chapter 475 at beginning of (1) inserted exception clause; inserted (3) prohibiting person incarcerated from filing complaint against licensed or certified health care provider; and made minor changes in style. Amendment effective May 1, 1997.

Severability: Section 6, Ch. 475, L. 1997, was a severability clause.

Case Notes

Privileged Communication Precluding Defamation Claim — Summary Judgment Proper: Plaintiff contended that a Department of Transportation real estate appraiser defamed plaintiff by filing two written complaints with the Department of Labor and Industry alleging that plaintiff failed to comply with uniform standards when preparing appraisals on two condemned properties. The District Court summarily dismissed plaintiff's claim on grounds that the complaints were privileged communications. Plaintiff appealed, but the Supreme Court affirmed. The appraiser's complaints were made in an official proceeding authorized by law and were made to the proper authorities responsible for the interest being expressed and were thus, as a matter of law, privileged communications that were not subject to a claim of libel or slander. No genuine issue of material fact existed, so summary judgment for defendant was proper. McLeod v. St., 2009 MT 130, 350 M 285, 206 P3d 956 (2009), following Skinner v. Pistoria, 194 M 257, 633 P2d 672 (1981).

37-1-309. Notice — request for hearing.

Compiler's Comments

2015 Amendment: Chapter 80 in (1) in middle of first sentence inserted "and the provisions of 37-1-321 do not apply". Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

2001 Amendment: Chapter 492 in (1) inserted third sentence regarding prerequisite for notice alleging violation. Amendment effective October 1, 2001.

37-1-311. Findings of fact — order — report.

Compiler's Comments

2007 Amendment: Chapter 225 substituted (2) concerning report of suspension for former text that read: "(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public." Amendment effective January 1, 2009.

Severability: Section 6, Ch. 225, L. 2007, was a severability clause.

Administrative Rules

ARM 24.101.404 Posting disciplinary orders on licensee lookup database.

37-1-312. Sanctions — stay — costs — stipulations.

Case Notes

Board Increase in Penalty for Unprofessional Psychiatrist Conduct Affirmed: Following charges against a psychiatrist for unprofessional conduct, the Board of Medical Examiners considered the entire record and decided to exceed sanctions proposed by the hearings examiner by revoking the psychiatrist's license. The District Court affirmed the Board's action, and on appeal, the Supreme Court also affirmed. Having reviewed the complete record, the Board's increase in the proposed penalty was statutorily authorized and was not arbitrary or capricious. Thus, the Board did not commit an error of law by imposing the increase in penalty. Munn v. Bd. of Medical Examiners, 2005 MT 303, 329 M 401, 124 P3d 1123 (2005), distinguishing St. v. Shodair Hosp., 273 M 155, 902 P2d 21 (1995).

Administrative, Not Criminal, Sanctions Properly Imposed by Board of Outfitters Against Outfitter Who Hired Unlicensed Guide: Crismore hired an unlicensed guide. Pursuant to this section, the Board of Outfitters fined Crismore $1,000, placed him on probation for 18 months, and ordered him to complete remedial education. Crismore contended that the Board should have applied 37-47-344 (now repealed), which is the misdemeanor criminal statute that specifically applies to outfitters and guides and provides a maximum fine of $500. The Supreme Court found that Crismore's argument had no basis in law. The Board of Outfitters has no authority to conduct a criminal proceeding that may lead to a misdemeanor sentence under 37-47-344. That authority is vested in courts of limited jurisdiction. Rather, the Board has authority to enforce license regulations and conduct administrative contested case hearings pursuant to 37-1-303 and therefore properly exercised its authority to sanction Crismore pursuant to this section. Crismore v. Bd. of Outfitters, 2005 MT 109, 327 M 71, 111 P3d 681 (2005).

Outfitter's Obligation to Ensure Licensure of Guide — Board's Failure to Notify Outfitter of Unlicensed Guide Not Due Process Violation: Crismore hired an unlicensed guide and was sanctioned by the Board of Outfitters. Crismore appealed on grounds that he was denied due process because he was not informed until after the contested case hearing that the guide had applied for a license through a different outfitter but the application was returned for administrative reasons, denying Crismore of the opportunity to present a full and complete defense at the hearing. Although acknowledging that Crismore had a property interest in the outfitter's license that entitled him to due process protections, the Supreme Court nevertheless affirmed that Crismore was not denied due process. It is the responsibility of an outfitter to employ only licensed guides and to sign a guide's license when the guide is employed. It is not the responsibility of the Board to inform every licensed outfitter of the name of each person who unsuccessfully applies for a guide's license. Crismore was given a timely and meaningful opportunity to present his case to the Board as to why he hired an unlicensed guide. Crismore v. Bd. of Outfitters, 2005 MT 109, 327 M 71, 111 P3d 681 (2005).

37-1-313. Appeal.

Compiler's Comments

2015 Amendment: Chapter 80 in (1) inserted "by a board under 37-1-308 through 37-1-312"; inserted (2) regarding appeal of deficiency determination; and made minor changes in style. Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

37-1-316. Unprofessional conduct.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 381, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 576 in (19) at end substituted "Title 16, chapter 12, part 5" for "Title 50, chapter 46, part 3". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

2011 Amendment: Chapter 419 inserted (19) relating to use of electronic means to obtain information relating to registry identification cards for medical use of marijuana. Amendment effective July 1, 2011.

Severability: Section 39, Ch. 419, L. 2011, was a severability clause.

2009 Amendments — Composite Section: Chapter 109 at end of introductory clause substituted "part" for "chapter"; deleted former (10) that read: "addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance"; in (10) at beginning after "use of" inserted "alcohol" and at end after "mentally" inserted "in the performance of licensed professional duties"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 158 inserted (17) to provide that failure of a health care provider to require that independent professional service providers are appropriately insured constitutes unprofessional conduct; and made minor changes in style. Amendment effective April 3, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

Case Notes

Expert Opinions in Legal Malpractice Claim During Summary Judgment — Plaintiffs Not Required to Prove That Underlying Case Was Winner: An attorney missed a statute of limitations deadline in a medical malpractice case by failing to file an application with the Montana Medical Legal Panel before filing a complaint in District Court, as required under 27-6-301 and 27-6-701. After the medical malpractice claim was dismissed, the plaintiffs filed a legal malpractice case against the attorney, but the District Court dismissed the legal malpractice case during summary judgment by relying completely on the affidavit of the attorney's expert while disregarding the opinions of three of the plaintiffs' witnesses. On appeal, the Supreme Court determined that the plaintiffs' opinions from two doctors and one legal expert were sufficient to overcome summary judgment. The Supreme Court held further that at the summary judgment stage, the plaintiffs had to establish only that, but for the attorney's negligence, the plaintiffs would have been able to present sufficient evidence to withstand summary judgment for the underlying medical claim and reach the jury with the case. Labair v. Carey, 2012 MT 312, 367 Mont. 453, 291 P.3d 1160.

Arbitrated Reinstatement of Nurse Affirmed — Violation of Public Policy Exception Inapplicable: An arbitration panel found that a nursing home had wrongfully discharged a nurse and recommended that the nurse be reinstated with no loss of seniority, wages, or benefits. The nursing home appealed on grounds that reinstating the nurse would violate public policy regarding the licensing of nurses because the nurse's alleged impairment would present a threat to the health and safety of vulnerable patients. The Supreme Court concluded that the public policy exception to court enforcement of arbitrated decisions did not apply in this case. The fact that the subject of an inquiry by an arbitration panel may also involve a possible violation of public policy does not mean a court may do the arbitrator's task and determine that reinstatement is not appropriate. Simply because an employee has committed some act that violates a law or public policy during the course of employment does not mean that reinstatement would violate that public policy, and only if the record clearly shows that the grievant is likely to engage in wrongful conduct in violation of public policy in the future could reinstatement be said to violate public policy. Teamsters Union Local No. 2 v. C.N.H. Acquisitions, Inc., 2009 MT 92, 350 M 18, 204 P3d 733 (2009). See also United Paperworkers Int'l Union v. Misco, Inc., 484 US 29 (1987), and Stead Motors v. Automotive Machinists Lodge No. 1173, 886 F2d 1200 (9th Cir. 1989).

Board Increase in Penalty for Unprofessional Psychiatrist Conduct Affirmed: Following charges against a psychiatrist for unprofessional conduct, the Board of Medical Examiners considered the entire record and decided to exceed sanctions proposed by the hearings examiner by revoking the psychiatrist's license. The District Court affirmed the Board's action, and on appeal, the Supreme Court also affirmed. Having reviewed the complete record, the Board's increase in the proposed penalty was statutorily authorized and was not arbitrary or capricious. Thus, the Board did not commit an error of law by imposing the increase in penalty. Munn v. Bd. of Medical Examiners, 2005 MT 303, 329 M 401, 124 P3d 1123 (2005), distinguishing St. v. Shodair Hosp., 273 M 155, 902 P2d 21 (1995).

No Showing of Damages or That Client Would Have Prevailed on Lost Appeal of Marital Dissolution Case — Failure of Legal Malpractice Claim: Richards brought a malpractice claim against an attorney who negligently failed to appeal Richards' marriage dissolution proceeding prior to the deadline for appeal. The District Court dismissed the claim, ruling that the court, rather than a jury, should decide the consequences of the attorney's failure to file the appeal and that the lost appeal would not have succeeded. Richards appealed, but the Supreme Court affirmed. Even though the attorney admitted malpractice by allowing the claim to expire, the attorney contended that no damages occurred. When a malpractice claim changes to the question of whether an attorney perfected an appeal, the analysis shifts from one of fact to one of law, which is properly considered by the court rather than a jury. The question of the probable outcome of a lost appeal also presents a question of law for the trial court to decide based on the special expertise required to analyze the relevant law and rules of appellate procedure, and the review is limited to the transcript and record of the underlying action and arguments presented by counsel. Here, there was substantial credible evidence regarding primary parenting time, valuation of the marital estate, and child support payments showing that Richards' lost appeal would not have resulted in a successful or favorable outcome. Further, one element of a legal malpractice claim requires a showing that the attorney's conduct proximately caused damages suffered by the claimant. Because Richards failed to show that the lost appeal would have been successful, he also failed to show that the attorney's breach caused any damages, so the malpractice claim failed. Richards v. Knuchel, 2005 MT 133, 327 M 249, 115 P3d 189 (2005).

Outfitter's Obligation to Ensure Licensure of Guide — Board's Failure to Notify Outfitter of Unlicensed Guide Not Due Process Violation: Crismore hired an unlicensed guide and was sanctioned by the Board of Outfitters. Crismore appealed on grounds that he was denied due process because he was not informed until after the contested case hearing that the guide had applied for a license through a different outfitter but the application was returned for administrative reasons, denying Crismore of the opportunity to present a full and complete defense at the hearing. Although acknowledging that Crismore had a property interest in the outfitter's license that entitled him to due process protections, the Supreme Court nevertheless affirmed that Crismore was not denied due process. It is the responsibility of an outfitter to employ only licensed guides and to sign a guide's license when the guide is employed. It is not the responsibility of the Board to inform every licensed outfitter of the name of each person who unsuccessfully applies for a guide's license. Crismore was given a timely and meaningful opportunity to present his case to the Board as to why he hired an unlicensed guide. Crismore v. Bd. of Outfitters, 2005 MT 109, 327 M 71, 111 P3d 681 (2005).

37-1-319. Rules.

Compiler's Comments

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Section 133 effective October 1, 1995.

Effective Date: Section 134, Ch. 429, L. 1995, provided in part that this section is effective on passage and approval for the purpose of drafting rules that will be adopted on or after October 1, 1995. Approved April 13, 1995.

Administrative Rules

ARM 24.111.409 Alternative healthcare — inactive status.

37-1-320. Mental intent — unprofessional conduct.

Compiler's Comments

Effective Date: Section 77(2), Ch. 492, L. 2001, provided that this section is effective October 1, 2001.

37-1-321. Authority to administratively suspend license.

Compiler's Comments

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

Effective Date: Section 14, Ch. 80, L. 2015, provided: "[This act] is effective July 1, 2015."

Administrative Rules

ARM 24.101.402 Definitions.
ARM 24.101.403 Fees.

37-1-331. Correctional health care review team.

Compiler's Comments

Effective Date: Section 4, Ch. 375, L. 1999, provided that this section is effective July 1, 1999.

Part 4

Uniform Regulations for Licensing Programs Without Boards

Part Compiler's Comments

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

37-1-401. Uniform regulation for licensing programs without boards — definitions.

Compiler's Comments

2023 Amendments — Composite Section — Code Commissioner Correction: Section 2, Ch. 481, L. 2023, in (4)(b) and (5)(b) in temporary version and in (4)(a) and (5)(a) in July 1, 2031, version in list of chapters inserted "60". Amendment effective October 1, 2023.

Section 10, Ch. 482, L. 2023, in (4)(b) and (5)(b) in temporary version and in (4)(a) and (5)(a) in July 1, 2031, version in list of chapters inserted "56". Amendment effective October 1, 2023.

Section 1, Ch. 483, L. 2023, in (4)(b) and (5)(b) in temporary version and in (4)(a) and (5)(a) in July 1, 2031, version in list of chapters inserted "16". Amendment effective October 1, 2023.

Section 1, Ch. 484, L. 2023, in (4)(b) and (5)(b) in temporary version and in (4)(a) and (5)(a) in July 1, 2031, version in list of chapters inserted "40". Amendment effective October 1, 2023.

Section 3, Ch. 628, L. 2023, in temporary version inserted (4)(a) and (5)(a) inserting reference to Title 37, chapter 2, part 6. Amendment effective July 1, 2023, and terminates June 30, 2031.

Section 20, Ch. 713, L. 2023, in (4)(b) and (5)(b) in temporary version and in (4)(a) and (5)(a) in July 1, 2031, version in list of chapters deleted "35". Amendment effective October 1, 2023.

The Code Commissioner moved a reference to chapter 40 in sec. 1, Ch. 484, L. 2023, from (4)(c) to (4)(b) in the temporary version and from (4)(b) to (4)(a) in the version effective July 1, 2031, to reflect the correct reference to laws governing the licensure of sanitarians.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2021 Amendment: Chapter 206 in definition of profession or occupation inserted reference to chapter 49 of Title 37; and made minor changes in style. Amendment effective April 16, 2021.

2007 Amendments — Composite Section: Chapter 11 in (4)(a) and (5)(a) after "72" deleted "or 76"; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 502 in definitions of license and profession in (a) after reference to chapter 72 inserted reference to chapter 73; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2003 Amendment: Chapter 410 in definition of license and in definition of profession or occupation inserted (a) relating to Title 37, chapters 35, 72, and 76. Amendment effective October 1, 2003.

Severability: Section 23, Ch. 410, L. 2003, was a severability clause.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "2-15-1701" for "2-15-1801". Amendment effective July 1, 2001.

37-1-402. Unprofessional conduct — complaint — investigation — immunity.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 381, L. 2023. Amendment effective October 1, 2023.

37-1-403. Notice — request for hearing.

Compiler's Comments

2015 Amendment: Chapter 80 in (1) in middle of first sentence inserted "and the provisions of 37-1-321 do not apply". Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

37-1-405. Findings of fact — order — report.

Compiler's Comments

2007 Amendment: Chapter 225 substituted (2) concerning report of suspension for former text that read: "(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public." Amendment effective January 1, 2009.

Severability: Section 6, Ch. 225, L. 2007, was a severability clause.

Administrative Rules

ARM 24.101.404 Posting disciplinary orders on licensee lookup database.

37-1-407. Appeal.

Compiler's Comments

2015 Amendment: Chapter 80 in (1) inserted "by the department under 37-1-402 through 37-1-406"; inserted (2) regarding appeal of deficiency determination; and made minor changes in style. Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

37-1-410. Unprofessional conduct.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 381, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 109 at end of introductory clause substituted "part" for "chapter"; deleted former introductory clause of (2) and (2)(a) that read: "For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32"; in (13) at end after "mentally" inserted "in the performance of licensed professional duties"; in (14) at beginning inserted "exhibiting"; and made minor changes in style. Amendment effective October 1, 2009.

Code Commissioner Correction: In former (2) the phrase "additional practices are considered unprofessional conduct", which was originally stricken, was restored during the engrossing process. Because this phrase is rendered meaningless in the context of the amendments made by sec. 13, Ch. 109, L. 2009, the Code Commissioner has not codified the phrase.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2007 Amendment: Chapter 502 in (1) after "applicant" inserted "in a profession or occupation"; inserted (2) providing that for certain occupations, the use of alcohol or drugs and conduct not meeting generally accepted standards are considered unprofessional conduct; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

37-1-411. Practice without license — investigation of complaint — injunction — penalties.

Compiler's Comments

1999 Amendment: Chapter 230 in middle of (1) after "complaint" inserted "or other information received". Amendment effective October 1, 1999.

37-1-412. Violation of injunction — penalty.

Compiler's Comments

1999 Amendment: Chapter 230 at beginning of (1) after "who" inserted "has been enjoined and who" and after "part" inserted "may be held in contempt of court and"; inserted (2) providing that person subject to injunction for practicing without license is subject to criminal prosecution; inserted (3) providing that person practicing licensed profession without license is guilty of misdemeanor, authorizing fines, imprisonment, or both, and providing that each violation constitutes separate offense; and made minor changes in style. Amendment effective October 1, 1999.

37-1-413. Department authority.

Compiler's Comments

Effective Date: Section 24(1), Ch. 230, L. 1999, provided that this section is effective October 1, 1999.

37-1-420. Continuing education — certification — other qualifications for continued licensure — audit.

Compiler's Comments

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

Effective Date: Section 14, Ch. 80, L. 2015, provided: "[This act] is effective July 1, 2015."

CHAPTER 2
GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1
Prescribing and Dispensing of Drugs

37-2-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 322, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 89 inserted definitions of controlled substance, dispense, naturopathic physician, opioid, and opioid-naive patient; in definition of pharmacy substituted "the meaning provided" for "the same meaning as provided"; and made minor changes in style. Amendment effective October 1, 2019.

2005 Amendment: Chapter 467 in definition of medical practitioner near end after "37-8-202" deleted "(5)"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 388 in definition of drug substituted "has the same meaning as provided in 37-7-101" for "means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to the pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (3), but the term does not include any device or any components of a device"; in definition of pharmacy substituted "has the same meaning as provided in 37-7-101" for "means an establishment which engages in the sale of drugs requiring a prescription"; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendments: Chapter 83, in (1) deleted "chiropody" and deleted parentheses around "podiatry".

Chapter 444, in definition of medical practitioner inserted "or a nursing specialty as described in 37-8-202(5)"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendment: In (1) inserted "or optometry".

1981 Amendment: Deleted "the official" after "Pharmacopoeia" in subsection (2)(a); deleted "office, pharmacy, drugstore, or other" from the definition of pharmacy in subsection (4); substituted "requiring a prescription" for "at retail" in subsection (4).

37-2-102. Practices declared unlawful between drug companies and medical practitioners — exception.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 322, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-2-103. Practices declared unlawful between medical practitioners and pharmacies — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 322, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-2-104. Dispensing of drugs by medical practitioners — registration — exceptions.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 237, L. 2023, inserted (9) providing that a naturopathic physician is included in the meaning of the term "medical practitioner". Amendment effective April 24, 2023.

Section 5, Ch. 322, L. 2023, in (4)(a) at end inserted exception for practitioner engaged in the practice of pharmacy and dispensing a drug pursuant to Title 37, chapter 7; and in (4)(b) at end inserted exception for practitioner engaged in the practice of pharmacy and dispensing a controlled substance pursuant to Title 37, chapter 7. Amendment effective October 1, 2023.

2021 Amendment: Chapter 454 substituted current language in subsections (1), (2), (3), (4), (5), (6), and (7) for former subsection (1) that read: "(1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs"; in (8) in introductory clause at end inserted "when a medical practitioner has not registered to dispense drugs or when a practitioner registered to dispense drugs is treating an injured worker pursuant to Title 39, chapter 71"; in (8)(h) near end after "must meet the labeling" inserted "storage, and recordkeeping"; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 253 in (2) after "does not prohibit" inserted "any of the following"; inserted (2)(i) regarding medical practitioner dispensing opioid antagonist; and made minor changes in style. Amendment effective May 3, 2017.

Preamble: The preamble attached to Ch. 253, L. 2017, provided: "WHEREAS, according to data from the United States Centers for Disease Control and Prevention (CDC), more than 28,000 deaths in the United States in 2014 involved opioid-related overdoses. In 2015, nationwide overdose deaths involving opioids rose to more than 33,000. The CDC also reports that deaths involving heroin have more than tripled since 2010, with more than 10,500 persons dying in 2014 and almost 13,000 dying in 2015. More than 60% of the opioid-related overdose deaths in 2015 were attributed to primarily illicit opioids, including heroin, to synthetic opioids other than methadone, or to a mixture of the two. The CDC calls opioid-related deaths a national epidemic; and

WHEREAS, many opioid-related overdose deaths could be prevented by the timely administration of an opioid antagonist, such as naloxone hydrochloride. Naloxone is a prescription medication that, when administered to a person experiencing an opioid-related overdose, restores the person to consciousness and normal breathing. Naloxone has been in use for more than 30 years and is virtually always effective when administered correctly. Furthermore, naloxone is nonaddictive and has no potential for abuse; and

WHEREAS, treatment of a suspected opioid-related drug overdose must be performed by someone other than the person overdosing, and, for this reason, the United States Food and Drug Administration labels naloxone for third-party administration. Naloxone can be successfully administered outside of a clinical setting or facility by friends, family members, or bystanders who have received minimal training in overdose recognition and naloxone administration; and

WHEREAS, it is common for a family member or friend to be the first one to find a person who is experiencing a drug overdose. It is also common for first responders, such as law enforcement officers or firefighters, to be among the first persons on the scene of a reported drug overdose. Studies show widespread success in preventing deaths from opioid-related overdoses through timely administration of naloxone. It is imperative, therefore, that persons who are in a position to render timely assistance to an overdose victim have immediate access to naloxone when it is needed; and

WHEREAS, overdose education and naloxone distribution programs that train family members, friends, and others in a position to assist someone experiencing an opioid-related overdose can effectively reduce opioid overdose death rates. Moreover, naloxone distribution for administration by nonmedical experts can be highly cost-effective; and

WHEREAS, an opioid-related overdose is a medical emergency. After the administration of naloxone, it is critical to summon emergency medical assistance. However, persons who witness an overdose are sometimes reluctant to call 9-1-1 for fear of being arrested and prosecuted for a crime. Thirty-six states and the District of Columbia have passed laws providing limited immunity to persons who call for help when someone has experienced an opioid-related overdose; and

WHEREAS, numerous state and national public health and other organizations support increased access to naloxone, including the American Medical Association, the American Society of Addiction Medicine, the American Pharmacists Association, the United States Conference of Mayors, the National Governors Association, the federal Office of National Drug Control Policy, the American Public Health Association, the Harm Reduction Coalition, the National Association of State Alcohol and Drug Abuse Directors, the American Association of Poison Control Centers, and state and local law enforcement and other organizations representing first responders."

2009 Amendment: Chapter 166 inserted (2)(h) providing that a medical practitioner is not prohibited from dispensing a drug the practitioner has prescribed if drug is not available from a community pharmacy and drug meets labeling requirements. Amendment effective October 1, 2009.

2007 Amendment: Chapter 125 in (2)(f) near beginning substituted "contraceptives, other than mifepristone" for "oral contraceptives"; and made minor changes in style. Amendment effective October 1, 2007.

1995 Amendments: Chapter 418 in (2)(f) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2)(f) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted (2)(g) concerning contract physician dispensing drugs at urban Indian clinic.

1989 Amendment: Inserted (2)(f) allowing dispensing of oral contraceptives under certain circumstances; and made minor change in phraseology. Amendment effective April 8, 1989.

37-2-106. Existing ownership of pharmacy.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-2-107. Civil penalty for unreadable prescription.

Compiler's Comments

Deadline for Adoption of Initial Rules: Section 2, Ch. 436, L. 2005, provided that rules required by this section must be adopted by July 1, 2006.

Effective Date: This section is effective October 1, 2005.

Applicability: Section 4, Ch. 436, L. 2005, provided: "[This act] applies to a prescription written after [the effective date of this act]." Effective October 1, 2005.

37-2-108. Restriction on prescriptions for opioid-naive patients — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 322, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 7(1), Ch. 89, L. 2019, provided that this section is effective October 1, 2019.

Termination: Section 8, Ch. 89, L. 2019, provided: "[Section 2] [37-2-108] terminates June 30, 2025."

Part 2

Nonliability for Peer Review — Confidentiality of Medical Assistance Program Information

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In four places inserted reference to medical ethics review.

37-2-202. Confidentiality of medical assistance program information — health care information.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 3

Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.

Compiler's Comments

1995 Amendments: Chapter 418 in (1), in first sentence, substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1), in first sentence, substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: In last sentence of (2), after "Fines", inserted "except those collected by a justice's court".

37-2-302. Gunshot or stab wounds to be reported.

Compiler's Comments

2017 Amendment: Chapter 59 after "health care profession" inserted "who is", after "shall" inserted "as soon as is practicable", and deleted last sentence that read: "Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail." Amendment effective March 1, 2017.

37-2-303. Immunity from liability.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-2-304. Failure of health care provider to obtain insurance as unprofessional conduct.

Compiler's Comments

Effective Date: Section 5, Ch. 158, L. 2009, provided: "[This act] is effective on passage and approval." Approved April 3, 2009.

37-2-305. Telehealth services — rulemaking authority.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Code Commissioner Correction: To reflect the repeal of 50-46-310 and the enactment of similar provisions in 16-12-509 by Ch. 576, L. 2021, the Code Commissioner in (3)(c) substituted "16-12-509" for "50-46-310".

37-2-306. Performance of sensitive medical examinations — informed consent required.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

37-2-307. Medical or surgical transition for minors.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Severability: Section 10, Ch. 306, L. 2023, was a severability clause.

37-2-311. Report to department of justice by physician.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Code Commissioner Correction: In (2)(a) the Code Commissioner substituted "commercial driver's license" for "commercial motor vehicle operator's endorsement". Chapter 195 changed references in statutes from commercial motor vehicle operator's endorsement to commercial driver's license. The Code Commissioner has made the change in this section pursuant to the authority provided in sec. 84, Ch. 10, L. 1993.

1991 Amendment: In (1), near end of second sentence after "examined", substituted "or investigated as" for "in the manner" and deleted reference to 61-5-110; and in (2)(a), after "license", inserted "driving privilege, or commercial motor vehicle operator's endorsement".

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

Source: This section is based on section 171.131 Minnesota Statutes Annotated.

Case Notes

No Duty of Clinic to Report Patient's Failure to Control Diabetes — Motion to Dismiss Proper: Survivors of decedents who were killed in a three-vehicle collision caused by a clinic patient driver who had failed to properly control his diabetes sued the clinic, claiming that the clinic breached its duty by failing to report its knowledge that Johnson was unfit to drive because of his failure to properly control his diabetes. The Supreme Court determined that the District Court did not err in granting the clinic's motion to dismiss, ruling that because this section provides for permissive rather than mandatory reporting, the clinic, as a matter of law, had no legal duty to report Johnson. Sikorski v. Johnson, 2006 MT 228, 333 M 434, 143 P3d 161 (2006).

37-2-312. Physician's immunity from liability.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: This section is based on section 171.131 Minnesota Statutes Annotated.

Case Notes

Clinic Granted Complete Immunity Despite No Report of Patient's Failure to Control Diabetes: Even if the clinic was grossly negligence in providing a report of its patient's failure to control his diabetes, this section provides the clinic with complete immunity as a matter of law. Sikorski v. Johnson, 2006 MT 228, 333 M 434, 143 P3d 161 (2006).

37-2-315. Direct billing for anatomic pathology services.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Applicability: Section 3, Ch. 266, L. 2005, provided: "[This act] applies to anatomic pathology services furnished after October 1, 2005."

37-2-316. Assistance program audits.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

37-2-317. Recognition of federal authority.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 298, L. 2023, amended sec. 7, Ch. 412, L. 2019, by extending the termination date imposed by Ch. 412 to September 30, 2025. Effective April 26, 2023.

Effective Date: This section is effective October 1, 2019.

Termination: Section 7, Ch. 412, L. 2019, provided: "[This act] terminates September 30, 2023."

37-2-318. Community health aide program — exception to licensing requirements.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 298, L. 2023, amended sec. 7, Ch. 412, L. 2019, by extending the termination date imposed by Ch. 412 to September 30, 2025. Effective April 26, 2023.

Effective Date: This section is effective October 1, 2019.

Termination: Section 7, Ch. 412, L. 2019, provided: "[This act] terminates September 30, 2023."

Part 4
Medical Practice Group Quality Assurance

Part Compiler's Comments

Effective Date: Section 8, Ch. 291, L. 2011, provided that this part is effective April 28, 2011.

37-2-401. Definitions.

Compiler's Comments

2013 Amendment: Chapter 265 in definition of data in (a) in middle inserted "may be shared with a medical practitioner, including the medical practitioner being reviewed, and that" and inserted last sentence regarding subsequent evaluations and analysis; in definition of incident report or occurrence report in (a)(i) substituted "may be but is not required to be created by the staff involved" for "created", inserted (a)(ii) regarding factual rendition of event, and in (b) substituted current language for former (b) that read: "(b) The terms do not include any subsequent evaluation of the event by a quality assurance committee that was conducted in response to an incident report or occurrence report"; and made minor changes in style. Amendment effective October 1, 2013.

Preamble: The preamble attached to Ch. 265, L. 2013, provided: "WHEREAS, the Montana Legislature adopted Montana's peer review statutes over 50 years ago, noting that peer review is in the interest of the public health; and

WHEREAS, in Sistok v. Kalispell Regional Hospital, 251 Mont. 38, 823 P.2d 251 (1991), the Montana Supreme Court held that Montana's peer review statutes confer a privilege on data created by or at the request of a medical review committee; and

WHEREAS, in Sistok v. Kalispell Regional Hospital, the Montana Supreme Court also observed that the statute providing for confidentiality was developed and the privilege was conferred by the Legislature as a matter of public policy to encourage health care providers to join medical review committees in an effort to ensure the responsive and full discourse among the professionals involved and to promote an atmosphere free of apprehension so that constructive criticism could occur; and

WHEREAS, in Huether v. District Court, 2000 MT 158, 300 Mont. 212, 4 P.3d 1193, the Montana Supreme Court found that Montana's peer review statutes are typical of the statutes adopted by various states to encourage candor in medical review committees that review and evaluate the quality of medical care provided in their hospitals; and

WHEREAS, in Huether v. District Court, the Montana Supreme Court also noted that the goal of Montana's peer review statutes is to promote continuous improvement in the quality of health care delivery through review of standardized health care operations and the performance of doctors and staff; and

WHEREAS, the Legislature finds that the continuous review and improvement of health care is in the interest of all Montanans; and

WHEREAS, the Legislature finds it appropriate to revise certain definitions in order to clarify which information is privileged and which information is not privileged under Montana's peer review statutes."

Part 5

Medical Practice Protection Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 2023.

Severability: Section 6, Ch. 533, L. 2023, was a severability clause.

Part 6

Pediatric Complex Care Assistant Services

Part Compiler's Comments

Effective Date: Section 9, Ch. 628, L. 2023, provided: "[This act] is effective July 1, 2023."

Termination: Section 10, Ch. 628, L. 2023, provided: "[This act] terminates June 30, 2031."

37-2-603. Pediatric complex care assistant — qualifications — scope of practice.

Administrative Rules

Title 24, chapter 160, ARM Pediatric complex care assistants.

37-2-610. Rulemaking.

Administrative Rules

Title 24, chapter 160, ARM Pediatric complex care assistants.

CHAPTER 3

MEDICINE

Chapter Administrative Rules

Title 24, chapter 156, ARM Board of Medical Examiners.

Chapter Case Notes

Osteopaths: When an applicant failed to supply the information required by the Board of Medical Examiners and failed to take a required examination, the Board was within the scope of its constitutional and statutory authority in denying the applicant a license by reciprocity to practice unlimited medicine and surgery in the state of Montana and did not act in a discriminatory or capricious manner. Shelton v. Bd. of Medical Examiners, 166 M 472, 534 P2d 870, 32 St. Rep. 394 (1975).

Definition of "Osteopathy": "Osteopathy", as defined by its founder, dictionaries, and decisions of courts, "administers no drugs and uses no knife". St. v. Thierfelder, 114 M 104, 132 P2d 1035 (1943), overruled on another point in St. v. Labbitt, 117 M 26, 156 P2d 163 (1945).

Major and Minor Surgery Prohibited: Under the law regulating osteopathy, the practitioner is not authorized to perform surgery of any kind, either major or minor. St. v. Thierfelder, 114 M 104, 132 P2d 1035 (1943), overruled on another point in St. v. Labbitt, 117 M 26, 156 P2d 163 (1945).

Removal of Tonsils as Practice of Medicine: An osteopath was practicing medicine without a license in removing tonsils. St. v. Thierfelder, 114 M 104, 132 P2d 1035 (1943), overruled on another point in St. v. Labbitt, 117 M 26, 156 P2d 163 (1945).

Surgery Not Permitted by Amendment: In amending the original act under which the osteopath was forbidden to practice "major, minor or operative surgery" by striking out the word "minor", the Legislature did not intend to permit minor surgery. St. v. Thierfelder, 114 M 104, 132 P2d 1035 (1943), overruled on another point in St. v. Labbitt, 117 M 26, 156 P2d 163 (1945).

Penalty: Section 37-5-312 (now repealed) prescribes the penalty for violation of 37-5-305 (now repealed), both having the same history, Ch. 51, L. 1905. State ex rel. Freebourn v. District Court, 105 M 77, 69 P2d 748 (1937).

License Required of Physician: A physician or surgeon is not entitled, under the statute, to practice osteopathy without a license from the Board of Osteopathic Physicians (now Board of Medical Examiners). St. v. Hopkins, 54 M 52, 166 P 304 (1917).

Negative of Exception to Licensure Not Required: Unless statutory exception found in a statute is part of definition of offense sought to be described, the State is not required to negative such exception in an indictment or information. The proviso contained in 37-5-101(2)(b) (now repealed) is not such an exception, since neither physician nor surgeon can practice osteopathy without first obtaining a license therefor. St. v. Hopkins, 54 M 52, 166 P 304 (1917); St. v. Wood, 53 M 566, 165 P 592 (1917).

Regulation of Osteopathy Not Unconstitutional: The statute regulating practice of osteopathy is not invalid as arbitrary and unreasonable class legislation; nor does it make an arbitrary classification denying right of citizens to engage in lawful occupation and is therefore not an abuse of the police power of the state. St. v. Hopkins, 54 M 52, 166 P 304 (1917).

Temporary License as Matter of Defense: In prosecution for practicing osteopathy without a license, State is not required to negative defendant's possession of temporary certificate referred to in 37-5-304 (now repealed), this being a matter of defense. St. v. Hopkins, 54 M 52, 166 P 304 (1917); St. v. Wood, 53 M 566, 165 P 592 (1917).

Limitations on Practice: Section 37-5-101 (now repealed) does not authorize an osteopath to practice medicine or surgery but requires him to confine his practice to treatment by the use of the hands or mechanical appliances. St. v. Dodd, 51 M 100, 149 P 481 (1915).

Osteopathy Within State Police Power: The practice of osteopathy is a proper subject for police regulation. Johnson v. Great Falls, 38 M 369, 99 P 1059 (1909).

Chapter Attorney General's Opinions

Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities: No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under this chapter may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

Part 1
General

37-3-101. Purpose.

Case Notes

Applying Pharmaceutical Definition of "Drug" in DUI Case — Counter to Legislative Intent: The defendant was charged with felony DUI and reckless driving after inhaling aerosol dust-remover that contained 1,1-Difluoroethane (DFE). The defendant argued that the charge should be dismissed because the definition of "drug" in 37-3-101 for pharmaceutical drugs did not include DFE. The District Court denied the motion to dismiss, reasoning that it was illogical to apply the pharmaceutical definition of "drug" in a DUI statute under 1-2-107 because it would run counter to the legislative intent of protecting public safety. On appeal, the Supreme Court affirmed, ruling that the locations of the two uses of the term "drug" in the Montana Code Annotated demonstrated legislative intent that the pharmaceutical definition not apply to DUI statutes. St. v. Pinder, 2015 MT 157, 379 Mont. 357, 350 P.3d 377.

Driving Under Influence of Inhalant — Charge Proper Where Substance Used Diminishes Ability to Drive: The defendant was charged with felony DUI and reckless driving after inhaling aerosol dust-remover that contained 1,1-Difluoroethane (DFE). The defendant argued that the charge should be dismissed because the definition of "drug" in 37-3-101 did not include DFE. After his conviction, the defendant appealed the District Court's denial of his motion to dismiss. The Supreme Court affirmed, concluding that the language of the DUI statute plainly shows the Legislature intended to punish an individual who drove after ingesting "any" substance that diminished that person's ability to drive. St. v. Pinder, 2015 MT 157, 379 Mont. 357, 350 P.3d 377.

No Duty of Care Owed by State to Deceased Who Was Allegedly Victim of Malpractice by Doctor: Title 37, chapter 3, is not intended to protect a specific class of persons of which the deceased is a member from a particular type of harm, and thus no special relationship existed between the state and the deceased that gave rise to a special duty. Therefore the statutory special relationship exception to the public duty doctrine did not exist. Nelson v. St., 2008 MT 336, 346 M 206, 195 P3d 293, (2008).

37-3-102. Definitions.

Compiler's Comments

2021 Amendment: Chapter 242 inserted definition of store-and-forward technology; substituted current definition of telemedicine for former definition of telemedicine (see 2021 Session Law for former text); and made minor changes in style. Amendment effective January 1, 2022.

Code Commissioner Correction: To reflect the repeal of 50-46-310 and the enactment of similar provisions in 16-12-509 by Ch. 576, L. 2021, the Code Commissioner in definition of telemedicine in (c) substituted "16-12-509" for "50-46-310".

2019 Amendment: Chapter 220 inserted definition of community-integrated health care; in definition of emergency care provider at beginning inserted ""Emergency care provider" or", after ""ECP" means" substituted "a person" for "an emergency care provider", and at end inserted "An emergency care provider with an endorsement may provide community-integrated health care"; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 225 in definition of medical assistant inserted "physician assistant"; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendment: Chapter 154 in definitions of approved internship, approved medical school, and approved residency substituted "AOA" for "American osteopathic association"; inserted definitions of ACGME, AOA, ECP, LCME, and telemedicine; in definition of approved internship in first sentence substituted "program" for "hospital", before "standards" deleted "minimum", and substituted "ACGME" for "council on medical education of the American medical association"; in definition of approved medical school before "education" deleted "minimum", substituted "LCME or the world health organization" for "council on medical education of the American medical association", and substituted "that meet standards established by the board by rule" for "or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools"; in definition of approved residency after "program" deleted "in a hospital", before "standards" deleted "minimum", and substituted "ACGME" for "council on medical education of the American medical association"; in definition of practice of medicine at end of first sentence inserted "including electronic and technological means such as telemedicine"; and made minor changes in style. Amendment effective July 1, 2015.

2009 Amendment: Chapter 109 in definition of approved residency deleted second sentence that read: "However, the board may upon investigation approve any other residency". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendments — Composite Section: Chapter 85 inserted definition of medical assistant; and made minor changes in style. Amendment effective March 20, 2003.

Chapter 224 inserted definition of physician; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1)(c); changed internal references to the department and the board.

Administrative Rules

ARM 24.156.504 Internship.

Case Notes

Podiatrist Properly Excluded From Providing Testimony Regarding Doctor's Standard of Care — Consumer Protection Act Claims Properly Dismissed: The plaintiff sued the defendants, a doctor and his related medical business. The plaintiff alleged medical malpractice and Consumer Protection Act (CPA) violations stemming from the defendants' purported refusal to conduct further postoperative visits after his foot surgery. The plaintiff intended to call a podiatrist to testify to the standard of care. However, the District Court excluded the podiatrist because he was not a doctor of medicine or doctor of osteopathy as required in 26-2-601 and 37-3-102. The District Court then granted partial summary judgment on the CPA claim because the legal theories were premised upon allegations of professional negligence. A jury found in favor of the defendant. On appeal, the Supreme Court affirmed, holding that the podiatrist did not meet statutory criteria to provide standard of care testimony and that the CPA claims failed because the claim stemmed from the alleged acts of professional negligence. Hastie v. Alpine Orthopedics & Sports Medicine, 2015 MT 346, 382 Mont. 21, 363 P.3d 435.

Partnership Agreement — Definition of "Practice of Medicine" — Application to Psychologists: Former partners of a medical clinic sued the clinic, claiming they were entitled to full partnership interest payments under a partnership agreement. The agreement provided for a reduction of partnership interest payments if a former partner continued to engage in the "practice of medicine" within 3 years of disassociation. The plaintiffs, who were psychologists still working in the community, claimed the phrase "practice of medicine" was a technical term that did not include psychologists. The District Court disagreed and concluded that under contract law, the ordinary and plain meaning of the phrase should be followed and that the ordinary meaning of the phrase included the practice of psychology. The plaintiffs appealed to the Supreme Court, which affirmed the District Court's grant of summary judgment in favor of the clinic. Krajacich v. Great Falls Clinic, LLP, 2012 MT 82, 364 Mont. 455, 276 P.3d 922.

Question of Validity of Definition of Practice of Medicine: Although much of defendant's brief concerns the statutes controlling the practice of medicine, the question of the constitutional validity of this section was rendered moot by the jury's acquittal of the counts charged under that section. St. v. Blinzler, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

Attorney General's Opinions

Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities: No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

Examination and Diagnosis of Physical Handicaps by Physical Therapists: A physical therapist may not act as a consultant in evaluating and diagnosing physical handicaps of any person unless acting at the request and direction of a licensed physician. 38 A.G. Op. 9 (1979).

Paramedical Specialist to Be Licensed to Practice Nursing: A paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act. If a paramedical specialist practices nursing without being licensed, he is subject to the penal provisions of this Act. 36 A.G. Op. 18 (1975).

37-3-103. Exemptions from licensing requirements.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 154 in (1)(j) deleted second sentence that read: "The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana"; in (1)(k) substituted "surgical or medical technician" for "physical therapist, technician", after "37-3-104" deleted "or other paramedical specialist", and substituted "the individuals listed in this subsection (1)(k)" for "a paramedical specialist"; in (1)(m) inserted "including physical therapists and other licensees"; and made minor changes in style. Amendment effective July 1, 2015.

Chapter 161 in (2) near end before "mind" inserted "disorder of". Amendment effective April 1, 2015.

2005 Amendments — Composite Section: Chapter 126 in (1)(h) substituted "the practice of medicine by a physician licensed in another state and employed by the federal government" for "the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers"; and in (1)(i) at end after "nurse-midwives" substituted "under the conditions and limitations defined by law" for "under the supervision of a licensed physician". Amendment effective July 1, 2005.

Chapter 519 in (1)(l) substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

2003 Amendment: Chapter 85 in (1)(k) inserted reference to services by a medical assistant. Amendment effective March 20, 2003.

Chapter 224 deleted former (1)(f) that read: "(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter"; in middle of (2) after "M.D." inserted "D.O."; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

2001 Amendment: Chapter 492 in (1)(i) after "medical officers" deleted "of the armed forces of the United States". Amendment effective May 1, 2001.

1999 Amendment: Chapter 335 inserted (1)(q) exempting from licensing use of a defibrillator pursuant to Title 50, chapter 6, part 5; and made minor changes in style. Amendment effective July 1, 1999.

1991 Amendment: In (1)(p), at beginning of last sentence, inserted exception clause. Amendment effective July 1, 1991.

1989 Amendments: Chapter 97, in (1)(m) substituted "physician assistant-certified" for "physician's assistant".

Chapter 493 inserted (1)(p) relating to practice of direct-entry midwifery. Amendment effective April 11, 1989.

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

1983 Amendment: Inserted (1)(o) concerning execution of death sentence.

1981 Amendment: Substituted "appropriate amount and type of supervision" for "personal and responsible direction and" as regards paramedical specialists and technicians in (1)(l); inserted subsection (1)(m) concerning rendering of service by physician's assistant; inserted "with the exception of those licensees who hold a medical degree" after "licenses and," near the middle of (2).

Case Notes

Certified Registered Nurse Anesthetists Authorized to Administer Anesthesia Without Supervision by Physician: The Legislature has authorized certified registered nurse anesthetists to administer anesthesia to patients without physician supervision. Mont. Soc'y of Anesthesiologists v. Bd. of Nursing, 2007 MT 290, 339 M 472, 171 P3d 704 (2007).

Attorney General's Opinions

Paramedical Specialist to Be Licensed to Practice Nursing: A paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act. If a paramedical specialist practices nursing without being licensed, he is subject to the penal provisions of this Act. 36 A.G. Op. 18 (1975).

37-3-104. Medical assistants — guidelines.

Compiler's Comments

2017 Amendment: Chapter 225 throughout section in six places inserted "physician assistant"; and made minor changes in style. Amendment effective October 1, 2017.

Effective Date: Section 7, Ch. 85, L. 2003, provided: "[This act] is effective on passage and approval." Approved March 20, 2003.

Part 2
Board of Medical Examiners

Part Case Notes

Board of Medical Examiners — Immunity From Suit: In the exercise of its quasi-judicial authority, the Board of Medical Examiners is entitled to the absolute immunity from suit afforded executive officials. Koppen v. Bd. of Medical Examiners, 233 M 214, 759 P2d 173, 45 St. Rep. 1433 (1988).

Part Law Review Articles

Clamping Down on Health-Care Professionals: Board of Medical Examiners May Be Granted Unprecedented Investigative and Disciplinary Authority, Saravia & Kantor, 166 N.J.L.J. 8 (2001).

Reporting Physician Discipline and Malpractice, Haines, 26 Md. B.J. 39 (1993).

37-3-201. Organization.

Compiler's Comments

2015 Amendment: Chapter 154 in (1)(a) after "shall" deleted "at the first meeting each year"; in (1)(b) deleted second sentence that read: "The board shall authenticate acts, rules, orders, and licenses by applying the seal"; and in (2) after "37-1-307" deleted "and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-3-203". Amendment effective July 1, 2015.

2005 Amendments — Composite Section: Chapter 60 inserted (2) requiring the board to establish a screening panel for disciplinary matters and authorize the screening panel to oversee any rehabilitation program; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 126 in (1)(b) in second sentence after "orders" deleted "certificates" and at end after "by" inserted "applying"; and made minor changes in style. Amendment effective July 1, 2005.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Transfer of Regulation: The preamble to SB 393 (Ch. 87, L. 1981) provided: "WHEREAS, the sunset law, sections 2-8-103 [repealed in 1983] and 2-8-112, MCA, terminates the Board of Osteopathic Physicians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Osteopathic Physicians be terminated and that regulation of osteopathy be transferred to the Board of Medical Examiners." See State of Montana Report to the Legislature, Sunset Review Board of Osteopathic Physicians, 79SS-6, Legislative Auditor, 1980.

37-3-202. Policy.

Compiler's Comments

Continuing Licensure of Current Osteopath Licensees: Section 3, Ch. 87, L. 1981, provided: "Persons presently licensed by the board of osteopathic physicians shall continue to be eligible for licensure by meeting current qualifications for licensure. No new qualifications for licensure may be required of persons licensed prior to the effective date of this act [July 1, 1981]."

37-3-203. Powers and duties — rulemaking authority.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 275, L. 2023, in (1)(a) near middle after "podiatry" deleted "acupuncture"; and in (1)(a) and (1)(c) near middle after "Title 37, chapters 6" deleted "13". Amendment effective October 1, 2023.

Section 2, Ch. 705, L. 2023, in (1)(a) near beginning after "the requirements in" substituted "this chapter" for "Title 37, chapter 3, parts 1 through 4". Amendment effective July 1, 2023.

Applicability: Section 10, Ch. 705, L. 2023, provided: "[This act] applies to health care services provided on or after July 1, 2023."

2021 Amendments — Composite Section: Chapter 261 in (3)(d) after "committee" substituted "in accordance with 5-11-210" for "by August 1 of each year". Amendment effective April 20, 2021.

Chapter 576 in (3)(a) substituted reference to 16-12-502 for reference to 50-46-302 and after "medical condition provided for in" substituted "Title 16, chapter 12, part 5" for "Title 50, chapter 46"; and in (3)(d) after "provide the report to the" substituted "economic affairs interim committee" for "children, families, health, and human services interim committee". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

2019 Amendment: Chapter 220 in (1)(a) after "Title 37, chapter 3, parts 1 through 4" substituted "and of" for "as well as" and at end substituted "Rules adopted for emergency care providers with an endorsement to provide community-integrated health care must address the scope of practice, competency requirements, and educational requirements" for "The rules must be fair, impartial, and nondiscriminatory"; in (4) after "licensing of physicians and" substituted "emergency care providers" for "ECPs"; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 154 in (1)(a) in first sentence after "carry out" substituted MCA references for "parts 1 through 3 of this chapter"; in (1)(c) in first sentence after "enforcement of" substituted MCA references for "parts 1 through 3 of this chapter", in second sentence at beginning inserted "The board also may assist the county attorneys of this state in", and at end of second sentence substituted "the provisions listed in this subsection (1)(c)" for "parts 1 through 3 of this chapter"; inserted (4) regarding board agreements with other states and ECPs from other states; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendments — Composite Section: Chapter 122 deleted former (1)(d) that read: "(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness"; inserted (2)(a) regarding medical assistance program; in (2)(b) at beginning deleted "If the board establishes a program pursuant to subsection (1)(d)", in two places before "program" inserted "medical assistance", and in two places before "program" inserted "treatment"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 124 inserted (3) regarding requirement for the board of examiners to report complaints of physician practice related to medical use of marijuana; and made minor changes in style. Amendment effective April 7, 2011.

Pursuant to sec. 38(1), Ch. 419, L. 2011, the Code Commissioner in (3)(a), (3)(a)(v), and (3)(c) substituted "use of marijuana for a debilitating medical condition" for "medical use of marijuana".

Pursuant to sec. 38(2), Ch. 419, L. 2011, the Code Commissioner in (3)(a) substituted "50-46-302" for "50-46-102".

2009 Amendment: Chapter 326 inserted (2) requiring board to allow licensee to enroll in a qualified program within Montana if one is available; and made minor changes in style. Amendment effective April 18, 2009.

2007 Amendment: Chapter 137 inserted (5) providing for board review of disability certification and eligibility determination for permit to hunt from vehicle; and made minor changes in style. Amendment effective April 5, 2007.

2005 Amendment: Chapter 467 deleted former (5) that read: "(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 in (4) after "rehabilitate" substituted "licensees subject to the jurisdiction of the board" for "licensed physicians". Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1993 Amendment: Chapter 419 in (4), before "drugs", substituted "addictive" for "narcotic" and at end inserted reference to mental or chronic physical illness; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: Inserted (6) concerning funding additional staff by increasing license fees. Amendment effective April 16, 1991.

Preamble: The preamble attached to Ch. 436, L. 1991, provided: "WHEREAS, the workload of the Board of Medical Examiners has increased significantly; and

WHEREAS, additional staff is necessary for the Board to address the increased caseload, serve Montana's physicians and the public, and fulfill its statutory mandates; and

WHEREAS, the Legislature feels it is appropriate to allow the Department of Commerce [now Department of Labor and Industry] to hire additional staff and fund any new position through an increase in the license fees charged to licensed physicians by the Board."

1989 Amendment: Inserted (5) relating to an executive secretary.

1987 Amendment: Inserted (4) allowing Board to establish a program to assist impaired licensees.

1981 Amendment: Deleted former subsection (2) requiring board approval of department hiring and other matters.

Continuation of Existing Osteopath Rules: Section 5, Ch. 87, L. 1981, provided: "Current rules of the board of osteopathic physicians remain in effect unless amended or repealed by the board of medical examiners."

37-3-204. Meetings.

Compiler's Comments

2015 Amendment: Chapter 154 in first sentence before "business" deleted "examinations and for other". Amendment effective July 1, 2015.

2001 Amendment: Chapter 492 deleted former third sentence that read: "Four members of the board constitute a quorum"; and made minor changes in style. Amendment effective October 1, 2001.

37-3-205. Records.

Compiler's Comments

2005 Amendment: Chapter 126 in first sentence after "applicants for" substituted "licenses" for "certificates". Amendment effective July 1, 2005.

Case Notes

Register as Evidence: Fact that osteopath's name did not appear on register of applicants to Board of Medical Examiners for certificate to practice was sufficient to establish that he was not a duly licensed practitioner of medicine or surgery; where the record has been identified as one required by law to be kept, the presumption attaches, under 26-1-602, that it has been correctly kept. St. v. Hopkins, 54 M 52, 166 P 304 (1917).

37-3-206. Compensation and expenses of members.

Compiler's Comments

1981 Amendment: After "shall" substituted language providing that Board members receive compensation and travel expenses as provided in 37-1-133 for "$25 per day compensation while traveling to and from board meetings and while attending board meetings and for each full day away from home while conducting board business, plus travel expenses as provided for in 2-18-501 through 2-18-503, while in the active and necessary discharge of his duties".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-3-211. Executive officer.

Compiler's Comments

2015 Amendment: Chapter 154 at end substituted "executive officer" for "executive secretary". Amendment effective July 1, 2015.

2005 Amendment: Chapter 467 near beginning after "services" substituted "to the board in connection with the board's duties under this chapter, assist in prosecution and matters of license discipline, and administer the board's affairs" for "provided for in 37-3-203(5)" and at end after "secretary" deleted "selected by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 after "shall hire" substituted "an executive secretary" for "a person" and after "by the board" deleted part of former introductory clause and former (1) through (3) that read: "who:

(1) is a citizen of the United States;

(2) is of good moral character; and

(3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine"; and made minor changes in style. Amendment effective October 1, 2001.

Part 3
Licensing

Part Case Notes

Physiotherapy Practice of Medicine:

An alleged physiotherapist who attempted to remove moles from patient's body by use of surgical diathermy machine was guilty of unlawful practice of medicine. St. v. Moore, 141 M 86, 375 P2d 218 (1962).

Unlicensed person who affixed title "Dr." to his name and represented himself as a physiotherapist was guilty of practicing medicine without a certificate. St. v. Bain, 130 M 90, 295 P2d 241 (1956).

The practice of physiotherapy constitutes the practice of medicine under Montana law. St. v. Bain, 130 M 90, 295 P2d 241 (1956).

Medicine and Surgery the Same: Where an osteopath was charged with practicing medicine (removing tonsils) without a license, his contention that the information was fatally defective in that, if he was guilty of any offense it was practicing surgery, held of no merit, the practice of medicine and surgery being considered as one under the statutes and by long acceptation by the people generally. "Osteopathy", as defined by its founder, dictionaries, and decisions of courts, briefly stated, "administers no drugs and uses no knife". St. v. Thierfelder, 114 M 104, 132 P2d 1035 (1943), reversed on other grounds in St. v. Labbitt, 117 M 26, 156 P2d 163 (1945).

Designation of Offense — Bill of Particulars Required: Where statute under which one is charged sets forth a number of ways in which the offense may be committed (such as former section prohibiting practice of medicine or surgery without a certificate and defining "practicing medicine or surgery"), the accused is entitled to know what particular portion of the section he is accused of violating, and by entering a plea of not guilty he may not be held to have waived his right to a bill of particulars. There is no statute in Montana requiring it, but the right exists by virtue of the provisions of both federal and state constitutions to know the nature and cause of the accusation. State ex rel. Wong Sun v. District Court, 112 M 153, 113 P2d 996 (1941).

Penalty — Jurisdiction in District Court: Prosecution of osteopath for practicing medicine and surgery without a license fell within exclusive jurisdiction of District Court and not within that of Justice of the Peace, the penalty for the offense exceeding Justice's Court jurisdiction. State ex rel. Freebourn v. District Court, 105 M 77, 69 P2d 748 (1937).

Osteopaths — Practice of Medicine: In former statute prohibiting practice of medicine or surgery without a certificate and defining "practicing medicine or surgery", proviso that nothing in section should restrict legally licensed osteopaths did not permit osteopaths to practice medicine or surgery without a certificate. St. v. Hopkins, 54 M 52, 166 P 304 (1917); St. v. Wood, 53 M 566, 165 P 592 (1917); St. v. Dodd, 51 M 100, 149 P 481 (1915).

37-3-301. License required — kinds of licenses.

Compiler's Comments

2015 Amendment: Chapter 154 in (2) near beginning of first sentence substituted "two" for "four", at end of first sentence substituted "and a resident license" for "a specialized license, a temporary license, and a telemedicine license issued in accordance with 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349", and deleted second and third sentences that read: "The physician's license and the specialized license must be signed by the president, but the temporary license may be signed by any board member. The board shall decide which kind of license to issue"; inserted (3) regarding guidelines for practice of telemedicine; inserted (4) regarding validity of existing license; and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendments — Composite Section: Chapter 126 in (2) in first sentence after "four" substituted "kinds of licenses" for "forms of certificates of licensure", after "physician's" substituted "license" for "certificate", substituted "a specialized license" for "the restricted certificate", after "temporary" substituted "license" for "certificate", and after "telemedicine" substituted "license" for "certificate", in second sentence after "physician's" substituted "license" for "certificate", substituted "specialized license" for "restricted certificate", and after "temporary" substituted "license" for "certificate", and in third sentence after "which" substituted "kind of license" for "certificate"; deleted former (2)(a) through (2)(d) that read: "These certificates must be designated as:

(a) physician's certificate, which is subject to renewable registration in accordance with department rules;

(b) restricted certificate;

(c) temporary certificate, which is subject to specifications and limitations imposed by the board; and

(d) telemedicine certificate"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 467 in (2) near end of first sentence after "37-3-341 through" inserted "37-3-345 and 37-3-347 through"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Chapter 371 in (2) near beginning substituted "four forms" for "three forms" and inserted "and the telemedicine certificate issued in accordance with 37-3-341 through 37-3-349"; inserted (2)(d) concerning a telemedicine certificate; and made minor changes in style. Amendment effective October 1, 2000.

1997 Amendment: Chapter 492 in (2)(a) substituted "renewable registration" for "annual registration" and inserted "in accordance with department rules"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 145 in (2), in first sentence, increased number of forms of certificates from two to three and after "certificates" inserted "of licensure" and in first and second sentences inserted reference to restricted certificate; inserted (2)(b) relating to restricted certificate; and made minor changes in style. Amendment effective March 15, 1995.

37-3-303. Practice authorized by physician's license.

Compiler's Comments

2019 Amendment: Chapter 220 in middle substituted "covered by the practice of medicine, as defined in 37-3-102" for "embraced in 37-3-102(12)"; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 154 substituted "37-3-102(12)" for "37-3-102(8)" and after "manner" deleted "reasonably". Amendment effective July 1, 2015.

2005 Amendment: Chapter 126 at beginning after "physician's" substituted "license" for "certificate". Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapters 85 and 224 substituted "37-3-102(8)" for "37-3-102(6)"; and made minor changes in style. Chapter 85 amendment effective March 20, 2003, and Ch. 224 amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Case Notes

Authority of Hospital Board of Directors to Exclude Physician: Board of directors of either a public or private hospital has discretionary right to exclude, suspend, or enjoin staff privileges upon grounds set by medical staff that do not violate due process or discriminate. N. Valley Hosp., Inc. v. Kauffman, 169 M 70, 544 P2d 1219 (1976).

Practice in Hospitals: A licensee does not have an unqualified right, constitutional or otherwise, to practice in a public hospital. N. Valley Hosp., Inc. v. Kauffman, 169 M 70, 544 P2d 1219 (1976).

37-3-305. Qualifications for licensure.

Compiler's Comments

2017 Amendment: Chapter 156 inserted (3) regarding expedited licensure in another state, a fingerprint-based criminal record background check, and the prohibition on dissemination of criminal history record information; and made minor changes in style. Amendment effective April 4, 2017.

2015 Amendment: Chapter 154 in (1) substituted "subsection (2), the board shall grant" for "subsections (4) and (5), a person may not be granted" and substituted "to an applicant who" for "unless the person"; in (1)(c) near beginning before "completed" deleted "successfully", near beginning after first "program" deleted "of at least 2 years", and near end substituted "an approved residency program" for "a 2-year approved residency program"; inserted (1)(d) regarding passage of steps involved in medical examinations offered by various entities; in (1)(e) inserted "with the required nonrefundable fee"; inserted (3) and (4) allowing board to adopt rules; deleted former (3), (4), and (5) regarding temporary licenses (see 2015 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2015.

2009 Amendment: Chapter 109 in (1)(c) and in (3)(c) at beginning after "has" inserted "successfully", after "approved" substituted "residency" for "postgraduate", after "2 years or" inserted "for an applicant who graduated from medical school prior to 2000", and near end after "2-year" substituted "approved residency" for "postgraduate"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2005 Amendment: Chapter 467 in (1)(d) at beginning after "has" inserted "submitted" and at end after "application" deleted "file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board"; in (5)(d) at end after "department on" substituted "an approved form" for "a form prescribed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 306 in (1) near beginning of introductory clause substituted "subsections (4) and (5)" for "subsection (4)"; and inserted (5) providing that the 2-year minimum requirements do not apply to certain persons. Amendment effective October 1, 2003.

1999 Amendment: Chapter 230 at beginning of (1) inserted exception clause; in (1)(c) and (3)(c) substituted "postgraduate program of at least 2 years" for "internship of at least 1 year" and at end substituted "a 2-year postgraduate program" for "1 year internship"; deleted former (3)(d) that read: "(d) has made a personal appearance before at least one member of the board"; inserted (4) outlining persons exempt from 2-year minimum postgraduate requirements; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendment: Chapter 419 in (1) substituted "license" for "certificate"; in (1)(d), at beginning, inserted reference to file review by Board member and personal appearance at discretion of Board member and at end, after "before the board", deleted "unless such appearance has been specifically waived by the board"; and made minor changes in style. Amendment effective April 20, 1993.

Administrative Rules

ARM 24.156.607 Graduate training requirements for foreign medical graduates.

37-3-307. Qualifications for licensure — resident license.

Compiler's Comments

2015 Amendment: Chapter 154 in (1) near beginning of first sentence substituted "issue a resident license" for "issue to an applicant a temporary license" and substituted current text in (1)(a), (1)(b), and (2) regarding a good standing requirement, application and fee submission, and license renewal for former (1)(a) through (1)(d) (see 2015 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendments — Composite Section: Chapter 126 in (1) and in (3) in six places after "temporary" substituted "license" for "certificate"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 467 in (1)(a) at end after "examination" substituted "prescribed by the board" for "given and graded by the department, subject to 37-1-101"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 in middle of (1)(b) after "successors" inserted "by the national board of osteopathic medical examiners or successors"; throughout (3) substituted "temporary certificate" for "temporary license"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

37-3-308. Application fee — further tax forbidden.

Compiler's Comments

2015 Amendment: Chapter 154 in (1) after "applicant" deleted "for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee. All applicants, including applicants for a temporary license"; and made minor changes in style. Amendment effective July 1, 2015.

2009 Amendment: Chapter 109 in (2) at beginning substituted "A license tax may not" for "No license tax shall"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1981 Amendment: Substituted "all applicants including applicants for a temporary license, shall pay an initial application fee as prescribed by the board" for "all applicants except applicants for temporary licenses shall pay an initial application fee of $100" in (2); and deleted former subsection (3) which provided for a $25 fee for temporary licenses and renewals.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.156.409 Fee schedule.

ARM 24.156.606 Examination.

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-3-309. Application for license.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 126 in (2) near beginning of third sentence after "granted a" substituted "license" for "certificate"; and made minor changes in style. Amendment effective July 1, 2005. The amendment by Ch. 467 rendered the amendment by Ch. 126 void.

Chapter 467 at end of first sentence after "shall" substituted "apply to the department on an approved form" for "make application to the department, verified by oath and in a form prescribed by the board"; deleted former (2) that read: "(2) An applicant for a license on the basis of an examination shall file the application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing the application a graduate of but is then in attendance at an approved medical school, the applicant shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive a diploma at the end of the then-current school term. The applicant may not be granted a certificate until the applicant has filed with the department a diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1). A license may not be issued until the applicant has satisfied the board that the applicant has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in third sentence in (1) substituted "department" for "board" and at beginning of fourth sentence deleted "At the board's request" and at end substituted "pertinent to the department's inquiry" for "pertinent to the board's information"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: Near beginning of (2), substituted "60 days" for "30 days".

Administrative Rules

ARM 24.156.409 Fee schedule.

37-3-310. Notice of change of address or name — applicants — licensees.

Compiler's Comments

2011 Amendment: Chapter 100 in third sentence inserted "electronically or". Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-3-312. Issuance of license.

Compiler's Comments

2015 Amendment: Chapter 154 after "medicine" deleted "which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board". Amendment effective July 1, 2015.

37-3-313. Limiting authority to impose renewal fees.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) through (3) that read: "(1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay to the department a renewal fee as prescribed by the board.

(2) The payments for renewal must be made prior to the expiration date of the license, as set forth in a department rule. The department shall mail renewal notices before the renewal is due.

(3) Except as provided in 37-1-138, in case of default in the payment of the renewal fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying license to practice medicine may be considered lapsed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 224 in (1) substituted "renewal fee" for "registration fee"; in (2) in three places and near beginning of (3) substituted "renewal" for "registration"; in first sentence of (2) substituted "license" for "registration" and after "rule" deleted "and a receipt acknowledging payment of the registration fee must be issued by the department" and in middle of second sentence after "notices" deleted "at least 60 days"; near end of first sentence of (3) substituted "license" for "certificate", after "may be" substituted "considered lapsed" for "revoked", and after "board" deleted "on 30 days' notice given to the delinquent of the time and place of considering the revocation" and deleted former second, third, and fourth sentences that read: "A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the underlying certificate. A certificate may not be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law"; in (4) after "A" deleted "registration or" and after "license" inserted "or renewal"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 271 in (3) at beginning of first sentence inserted "Except as provided in 37-1-138" and at beginning of second sentence after "A" deleted "registered or" (amendment in second sentence rendered void by Ch. 224 amendment); and made minor changes in style. Amendment effective April 9, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 492 in (1), in (2), in first sentence, and in (3), in three places, before "registration", deleted "annual"; in (1), after "in this state shall pay", deleted "each year"; in (2), near beginning after "The", deleted "annual" and substituted "the expiration date of the registration, as set forth in a department rule" for "April 1"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted second sentence in (1) that read: "If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board or, at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year of absence or inactive practice"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1981 Amendment: Deleted ", not to exceed the sum of $100," after "an annual registration fee" in the first sentence of (1); deleted "in an amount not to exceed $50" after "a fee prescribed by the board" in the second sentence of (1); substituted "may be reinstated on the payment of a fee prescribed by the board" for "may be reinstated on the payment of a fee not to exceed $50" near the end of (1); and substituted "prescribed by the board" for "of $10" after "together with a delinquency penalty" near the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.156.409 Fee schedule.
ARM 24.156.615 Renewals.

37-3-314. Deposit of money received.

Compiler's Comments

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

37-3-321. Refusal of license.

Compiler's Comments

2015 Amendment: Chapter 154 in first sentence at end substituted "the board may deny the license" for "it shall refrain from authorizing the department to issue a license" and deleted former second and third sentences that read: "The department shall mail to the applicant, at the applicant's last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after the hearing the board determines that the applicant is not entitled to a license, the board shall refuse to grant the license." Amendment effective July 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-3-323. Suspension of license — investigation.

Compiler's Comments

2015 Amendment: Chapter 154 in (1)(b) substituted "has engaged in" for "has been guilty of"; and in (2) near end of first sentence substituted "the board or the board's representative if the board considers that the evaluation is in the best interests of the public" for "the board if it appears to be in the best interests of the public that this evaluation be secured". Amendment effective July 1, 2015.

2009 Amendment: Chapter 109 in (1) near middle after "suspect that a" inserted "license applicant or a"; and in (2) in second sentence after "licensee" inserted "or license applicant". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2005 Amendment: Chapter 126 in (1) near end after "license" deleted "or certificate"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 490 in (3), in first sentence after "incompetent", deleted "or seriously mentally ill or" and after "substances" inserted "or to have been committed pursuant to 53-21-127"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 429 at beginning of (1) substituted "department" for "board"; in (2), in first sentence after "may", inserted "upon order of the board" and deleted third and fourth sentences that read: "If the board has reasonable cause to believe that this probability exists, the department shall mail to the person's last address of record with the department a specification of the charges, together with a written notice of the time and place of the hearing on the charges, advising that the person may be present and may be represented by counsel if the person wants to offer evidence and be heard in the person's own defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice"; deleted (3) through (6) that read: "(3) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice medicine in this state charging that person with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section. The complaint must set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at the person's last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing, the board shall adopt a resolution finding the accused guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if the person is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke the person's license;

(b) suspend the person's right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place the person on probation;

(e) impose a fine, not to exceed $500 an incident; or

(f) take any other action in relation to disciplining the person as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee must be reinstated by the board if the suspended person furnishes the board with evidence that the person is then of good moral character and conduct, is restored to good health, and has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows the person has practiced medicine in this state during the term of suspension,

the board shall revoke the license, using the notice and hearing procedure provided in subsection (2). The revocation is final and absolute"; deleted (8) and (9) that read: "(8) A fine imposed under this section must be deposited in the general fund.

(9) The remedies and method of enforcement of this part, as provided for in this section, are concurrent and in addition to the other remedies provided in this part"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 419 in (6) substituted "subsection (2)" for "subsection (1)"; in (7), in first sentence after "use of", substituted "addictive substances" for "narcotics"; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: Near beginning of (3), before "complaint", substituted "written" for "sworn".

1989 Amendment: Inserted (4)(e) authorizing Board to impose fine not exceeding $500 upon licensee guilty of offenses; inserted (8) requiring deposit of fine in general fund; and inserted (9) establishing that remedies and method of enforcement are concurrent and in addition to other remedies.

Administrative Rules

ARM 24.156.626 Revocation or suspension proceedings.

Case Notes

What Section Applicable to License Revocation: Erickson asserted that the Montana State Board of Medical Examiners, pursuant to 37-1-203, needed to ascertain whether Erickson's conviction of Medicaid fraud related to the public health, welfare, or safety before considering whether to revoke Erickson's medical license. The Supreme Court held that this section sets out the procedure to be applied when the Board revokes or suspends a medical license. A person who has had a license revoked under this section as a result of a criminal conviction is entitled to consideration under 37-1-203 when seeking a new license following rehabilitation. Section 37-1-203 does not apply to the revocation of a license. Erickson v. St., 282 M 367, 938 P2d 625, 54 St. Rep. 395 (1997), overruling Mills v. Comm'r of Ins., 226 M 387, 736 P2d 102 (1987), and Gilpin v. Bd. of Nursing, 254 M 308, 837 P2d 1342 (1992).

License Revocation Warranted — Negligence, Malpractice, Unprofessional Conduct: Revocation of a general practitioner's medical license was warranted where evidence showed negligence and medical malpractice in the practice of obstetrics and neonatal care that resulted in the deaths of two infants. The physician continued to accept obstetrical patients after the restriction of the physician's practice in those areas. This was compounded by the physician's unprofessional conduct in misleading some of his obstetrical patients by informing them that he would have hospital privileges before the birth of their children and by providing obstetrical care in violation of the order to discontinue that service. Kauffman v. Dept. of Commerce, 229 M 204, 746 P2d 103, 44 St. Rep. 1905 (1987).

Charges Instituted by Board: Necessity prevents disqualification of Board from hearing charges instituted by it, since no other body is given jurisdiction to hear such charges. State ex rel. Yuhas v. Bd. of Medical Examiners, 135 M 381, 339 P2d 981 (1959).

Unprofessional Conduct: Former provision of statute authorizing revocation of physician's certificate "for unprofessional, dishonorable, or immoral conduct" gave Board jurisdiction to hear charges involving an attempted abortion, unauthorized removal of x-rays, overcharges for services not performed, and the encouragement of fraudulent claims before the Industrial Accident Board (now Division of Workers' Compensation) for injuries not received. State ex rel. Yuhas v. Bd. of Medical Examiners, 135 M 381, 339 P2d 981 (1959).

Notice of Revocation: Though Board of Medical Examiners is empowered to revoke certificate (see 2005 amendment) of a physician for unprofessional, dishonorable, or immoral conduct, it cannot arbitrarily revoke the certificate (see 2005 amendment) without giving physician reasonable notice of charge against him and time and place of trial. St. v. Schultz, 11 M 429, 28 P 643 (1892).

37-3-324. Reconsideration and review of actions of board.

Case Notes

Proper Denial of Petition for Judicial Review of Board of Medical Examiners' Decision to Disallow Reconsideration of Stipulation of Unprofessional Conduct: The Board of Medical Examiners found that a doctor had conducted himself in an unprofessional manner by drawing a smiley face on the breast of a cancer patient. The doctor attended two out-of-state facilities at the request of the professional assistance program and subsequently sued the program and several program physicians for false imprisonment, conspiracy, and other charges. The program then withdrew from the treatment arrangement, and the Board produced a stipulation, which the doctor signed, wherein he admitted that the conduct was unprofessional. The doctor's conduct was reported to the national practitioner database, and he was placed on probation for 1 year. After probation was terminated, the doctor petitioned for reconsideration of the stipulation on grounds that it was signed under duress, that the conduct was not unprofessional, and that the record of the charge made it difficult to find employment. The Board denied reconsideration, the District Court affirmed, and the doctor appealed, but the Supreme Court also affirmed. Substantial evidence supported the District Court's findings that the stipulation was not signed under duress, and the court's failure to address the Board's omission of the doctor's requested findings of fact was not in error. The Board has wide discretion under this section whether to reconsider a prior action, and the District Court did not err in concluding that the Board acted within its discretion in denying the petition for reconsideration. Hughes v. Mont. Bd. of Medical Examiners, 2003 MT 305, 318 M 181, 80 P3d 415 (2003).

37-3-333. Written informed consent for breast cancer treatment.

Compiler's Comments

Applicability: Section 9, Ch. 410, L. 1997, provided: "[This act] is applicable to all contracts issued or renewed on or after January 1, 1998."

37-3-356. Enactment — provisions.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

37-3-357. Designation of appointing authority.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Part 4
Reporting Obligations

37-3-401. Report of incompetence or unprofessional conduct.

Compiler's Comments

2011 Amendment: Chapter 122 in (2)(a) near end before "program" inserted "medical assistance" and substituted "37-3-203" for "37-3-203(1)(d)"; in (2)(b) before "program" inserted "medical assistance"; in (2)(b)(i)(B) and (2)(b)(i)(C) at beginning deleted "the licensee fails or refuses to"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 326 in (2)(a) near end substituted "37-3-203(1)(d)" for "37-3-203(4)". Amendment effective April 18, 2009.

1993 Amendment: Chapter 419 inserted (2) regarding program for physicians impaired by drugs or alcohol; and made minor changes in style. Amendment effective April 20, 1993.

Case Notes

Voluntary Act Precluding False Imprisonment Claim — Lack of Underlying Tort Precluding Civil Conspiracy Claim: A woman with breast cancer was advised by Hughes, a radiation oncologist, to undergo therapeutic radiology for the disease. Prior to radiation, an oncologist makes specific marks on the affected area to identify where to direct radiation beams. However, in addition to the marks directing radiation beams, Hughes drew a "smiley face" on the woman's breast by drawing two dime-sized "eyes" above the nipple of the breast and outlining the scar from the breast biopsy for the "mouth". The woman complained to hospital administration, and an ad hoc investigative committee recommended that Hughes receive a letter of reprimand, have a term of probation, have a chaperone while working, and be evaluated by the Montana Professional Assistance Program (MPAP). Hughes agreed to a medical, psychiatric, or chemical dependency evaluation and voluntarily enrolled in two such programs in Texas and Kansas. After release, Hughes signed an aftercare agreement. Hughes then brought suit against the individual members of the ad hoc committee and MPAP, alleging false imprisonment, civil conspiracy, breach of contract, and civil right violations related to the disciplinary actions. Summary judgment was granted to defendants in federal District Court on the civil rights claims, and the remaining charges were remanded to state District Court, where they were also summarily dismissed. Hughes appealed. The Supreme Court affirmed dismissal of the false imprisonment claim because Hughes voluntarily signed the treatment agreements and submitted to evaluation. Two elements of false imprisonment are the restraint of an individual against the individual's will and the unlawfulness of that restraint, but because no material fact existed as to the voluntariness of Hughes's action, the false imprisonment claim failed as a matter of law. Further, to sustain a civil conspiracy claim, plaintiff must allege a tort committed by one of the conspirators, but because the false imprisonment claim failed, there was no underlying tort action to form a basis for civil conspiracy, so that claim failed as well. Hughes v. Pullman, 2001 MT 216, 306 M 420, 36 P3d 339 (2001).

37-3-402. Insurer to report to board.

Compiler's Comments

1981 Amendment: Inserted the second sentence pertaining to reporting of settlements; added "and the basis of the settlement or court decision" at the end of the section.

37-3-403. Report of prohibition or limitation on practice by hospital.

Compiler's Comments

2015 Amendment: Chapter 154 at beginning of first sentence inserted exception clause regarding first two violations of various hospital policies; and made minor changes in style. Amendment effective July 1, 2015.

1995 Amendment: Chapter 429 at end of first sentence, after "taken", deleted "if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 37-3-322 or 37-3-323(1)"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Case Notes

Injunction to Preclude Reporting of Physician's Suspension Until Breach of Contract Issue Settled: A physician applied for a preliminary injunction to preclude defendant medical center from reporting the physician's suspension until the issue of whether defendant breached its contract by suspending the physician without just cause was resolved. The District Court granted the injunction and defendant appealed, but the Supreme Court affirmed. Defendant failed to demonstrate that the District Court manifestly abused its discretion by issuing the preliminary injunction. The District Court correctly found that the physician had met two criteria for issuance of the injunction by demonstrating the likelihood of success on the merits of the case and the need for relief to prevent great or irreparable injury to the physician. The criteria for issuing the injunction having been met, the District Court did not err in dismissing defendant's motion to dismiss. Doe v. Community Medical Center, Inc., 2009 MT 395, 353 M 378, 221 P3d 651 (2009). See also Cole v. St. James Healthcare, 2008 MT 453, 348 M 68, 199 P3d 810 (2008).

Part 8
Montana Health Corps Act

Part Compiler's Comments

Effective Date: Section 10, Ch. 385, L. 2009, provided: "[This act] is effective July 1, 2009."

Part Administrative Rules

Title 24, chapter 156, ARM Board of Medical Examiners.

37-3-802. Purpose — establishment of program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 705, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 10, Ch. 705, L. 2023, provided: "[This act] applies to health care services provided on or after July 1, 2023."

37-3-803. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 705, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 10, Ch. 705, L. 2023, provided: "[This act] applies to health care services provided on or after July 1, 2023."

37-3-804. Eligibility for participation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 705, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 10, Ch. 705, L. 2023, provided: "[This act] applies to health care services provided on or after July 1, 2023."

37-3-805. Visits — charges.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 705, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 10, Ch. 705, L. 2023, provided: "[This act] applies to health care services provided on or after July 1, 2023."

37-3-808. Insurance coverage — assessment on licensees — optional use.

Compiler's Comments

Effective Date: Section 8, Ch. 705, L. 2023, provided: "[This act] is effective July 1, 2023."

Applicability: Section 10, Ch. 705, L. 2023, provided: "[This act] applies to health care services provided on or after July 1, 2023."

CHAPTER 4
DENTISTRY AND DENTAL HYGIENE

Chapter Administrative Rules

Title 24, chapter 138, ARM Board of Dentistry.

Part 1
General

37-4-101. Definitions — practice of dentistry.

Compiler's Comments

2011 Amendment: Chapter 100 in (1) deleted former definition that read: ""Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia"; inserted definition of deep sedation; in definition of general anesthesia substituted current text for "means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure"; and deleted definition that read: ""General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia.

(ii) The term does not include a nitrous oxide and oxygen mixture or any other anesthetic administered to produce conscious sedation". Amendment effective October 1, 2011.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 151 in (2), at beginning, inserted exception clause; in (2)(b), at end, inserted exception for personal representatives; and made minor changes in style.

1985 Amendment: Inserted (1)(c) through (1)(e) defining conscious sedation, general anesthesia, and general anesthetic; and in (2)(i) after "nature", inserted "subject to the limitations provided in 37-4-511".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (1)(b); changed internal references to the department and the board.

Chapter 363 changed "board of dentists" to "board of dentistry" in (1)(a).

Administrative Rules

ARM 24.138.301 Definitions.

ARM 24.138.306 Teeth whitening.

37-4-102. Designations constituting prima facie evidence of practicing dentistry.

Compiler's Comments

1997 Amendment: Chapter 151 at beginning inserted exception clause; after "a person's name" substituted current language regarding various advertising forms for "in any way for advertising or upon any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of the same to be done"; and made minor changes in style.

37-4-103. Exemptions.

Compiler's Comments

2005 Amendment: Chapter 126 in (2) near beginning after "physician" deleted "or surgeon" and after "dental surgeon" substituted "employed by the United States government or to a legally licensed health care practitioner" for "of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner"; in (8)(b) near middle after "supervision of" inserted "a dentist licensed in Montana or"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 67 inserted (8) exempting students of accredited commission or accredited program or school and dental residents from licensure. Amendment effective July 1, 2003.

Severability: Section 4, Ch. 67, L. 2003, was a severability clause.

Saving Clause: Section 5, Ch. 67, L. 2003, was a saving clause.

1999 Amendment: Chapter 230 inserted (6) outlining certain clinics that can enter into contracts or be employed with licensees; and inserted (7) prohibiting clinic employing or contracting with dentist from governing certain activities related to delivery of dental care or precluding or restricting dentist's independence related to certain aspects of dental care delivery. Amendment effective April 2, 1999.

1997 Amendment: Chapter 151 inserted (5) relating to contracted dental services; and made minor changes in style.

1984 Initiative Amendment: Inserted (4) referring to practice of denturitry.

Case Notes

Use of Declaratory Judgment to Settle Question of Business Association Between Dentist and Denturist Improper — Dismissal for Failure to State Claim and Exhaust Administrative Remedies: Brisendine, a licensed denturist, presented to the Board of Dentistry a proposal stating his desire to enter into a business association with a dentist regarding fees and compensation. The Board issued a letter stating that it was considering the proposal but that such association would probably constitute the illegal practice of dentistry. The Board further threatened sanctions against Brisendine if he went forward with his proposal, but no final decision was ever issued by the Board. Brisendine sought a declaratory judgment and injunctive relief in District Court, requesting a decision on whether the business association was legal. The District Court dismissed the complaint for failure to present a justiciable controversy. On appeal, the Supreme Court affirmed, holding that use of a declaratory judgment at this stage of the proceedings constituted an attempt to seek an advisory opinion and an unwarranted intrusion into the Board's regulatory authority. The Supreme Court noted that Brisendine could seek a declaratory judgment from the Board without subjecting his license to suspension or revocation and that dismissal of the motion for declaratory judgment was proper because Brisendine had not exhausted his administrative remedies. Brisendine v. St., 253 M 361, 833 P2d 1019, 49 St. Rep. 444 (1992), distinguished in Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997).

37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative — restrictions.

Compiler's Comments

2021 Amendment: Chapter 503 in (3) in definition of disabled near beginning substituted "means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months" for "has the same meaning as provided for the term "permanently and totally disabled" in 15-30-2110". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Applicability: Section 7, Ch. 151, L. 1997, provided: "[Section 5] [37-4-104] applies to the sale or disposal of a dental practice managed, owned, operated, or otherwise conducted by the personal representative of a dentist whose death or disability occurs on or after [the effective date of this act]." Effective October 1, 1997.

Part 2
Board of Dentistry

Part Administrative Rules

Title 24, chapter 138, subchapter 1, ARM Organizational rule.
Title 24, chapter 138, subchapter 2, ARM Procedural rules.
Title 24, chapter 138, subchapter 5, ARM Licensing.

37-4-201. Official seal — organization — subpoena power — screening panel.

Compiler's Comments

2005 Amendment: Chapter 60 inserted (2) requiring the board to establish a screening panel for disciplinary matters and authorize the screening panel to oversee any rehabilitation program; and made minor changes in style. Amendment effective October 1, 2005.

37-4-202. Meetings — notice — records.

Compiler's Comments

2001 Amendment: Chapter 492 in (3) substituted text regarding open board meetings for former text that read: "Six members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest." Amendment effective October 1, 2001.

1997 Amendment: Chapter 481 at beginning of (3) increased number of members from five to six; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1987 Amendment: In (3) increased quorum requirement from four to five members.

Preamble: The preamble to Ch. 524, L. 1987, provided: "WHEREAS, Montana Initiative No. 97 created the Board of Denturitry; and

WHEREAS, Chapter 548, Laws of 1985, required the Legislative Audit Committee to conduct a review of the Board of Denturitry and to propose a bill to the 50th Legislature merging the Board of Denturitry and the Board of Dentistry if the Board of Denturitry has not licensed 30 denturists; and

WHEREAS, the Legislative Audit Committee has determined that the Board of Denturitry has not licensed 30 denturists."

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-4-204. Affiliation with national association authorized — delegates.

Compiler's Comments

1983 Amendment: Substituted "delegates" for "delegate".

1981 Amendments: Chapter 363 deleted former subsection (3) relating to railroad fares; and made minor changes in phraseology and punctuation.

Chapter 474 deleted subsections (1) through (3) relating to delegate reimbursement.

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-4-205. Rulemaking.

Compiler's Comments

1985 Amendment: After first sentence inserted remainder of section providing that rules may include the subjects of administration of anesthetics and advertising.

1985 Statement of Intent: The statement of intent attached to Ch. 518, L. 1985, provided: "A statement of intent is required for this bill because it contains a delegation of authority to allow the board of dentistry to adopt rules to regulate dental advertising and dental procedures involving the administration of anesthetics.

The legislature finds that no person who engages in the practice of dentistry or oral surgery should perform a dental or surgical procedure upon another person if a general anesthetic or general anesthesia is administered unless there is another qualified health professional available to monitor the patient. The legislature intends that any rule regulating dental anesthetics adopted by the board should be consistent with this finding.

The legislature intends that the board impose additional, necessary requirements for the training and skill of individuals who administer and monitor general anesthesia, deep conscious sedation, or any anesthetic agent used in pain control. In preparing its rules, the board should be guided by the principles stated in the "American academy of oral and maxillofacial surgeons' Model State Rules for General Anesthesia" and any other guide pertinent to the subject.

The examination and qualification of monitoring assistants under section 2(3) [37-4-511(3)] should require a level of proficiency higher than that required for basic life support but need not encompass all the requirements for advanced cardiac life support certification.

The legislature also intends that the board adopt rules for approving dental practice facilities in which general anesthesia is induced. The board may also adopt rules for approving dental practice facilities in which conscious sedation or nitrous oxide analgesia is used. In formulating any such rules, the board may look to similar rules developed by dental boards in California, Arizona, Texas, and other states. The board may appoint teams to inspect dental practice facilities. Initially these teams may include a majority of anesthesiologists. When a sufficient number of approved facilities exists, oral surgeons may constitute a majority of each inspection team. Rules for approving facilities should also establish the duration of permits, provide for periodic reinspection, and establish application and inspection fees. Compensation should be provided for service on inspection teams.

The board may delegate authority to examine monitoring assistants to inspection teams and may authorize such teams to adapt the practical aspect of examinations to the equipment in a particular facility.

Lastly, it is contemplated that the board will develop and implement appropriate rules regulating advertising practices by licensed dentists. The scope of such rules should extend to the content and purpose of such advertising as indicated in section 3 [37-4-205]. Such rules should have as a purpose the protection of the public from unprofessional advertising and the maintenance of professional standards in advertising by persons engaged in the practice of dentistry."

1983 Statement of Intent: The statement of intent attached to Ch. 349, L. 1983, provided in part: "A Statement of Intent is required because Section 2 [37-4-205] delegates to the Board of Dentistry power to make rules for the implementation, continuation, and enforcement of all sections within Title 37, chapter 4. This provision is intended as a backup to the various provisions giving the Board rulemaking authority over portions of the chapter as are found in 37-4-301 (examination criteria for dental license), 37-4-307 (dentist license fees), 37-4-321 [now repealed] (defining unprofessional conduct), 37-4-402 (examination criteria for dental hygienist license), 37-4-406 (hygienist license fees), and 37-4-408 (scope of duties of dental assistants). This is consistent with authority delegated to most other professional licensing boards. Section 2 grants the Board the authority to interpret or implement other parts of the chapter that are not covered by existing delegation. The Board shall be bound by statements of intent adopted in 1979 for these other sections and may not use Section 2 for rulemaking authority when a more specific delegation suffices."

Administrative Rules

Title 24, chapter 138, ARM Board of Dentistry.

Part 3
Licensing

Part Case Notes

Board of Dentistry Not Immune When Seeking Injunctive Relief in District Court: The Board of Dentistry alleged that Kandarian, a denturist, was practicing dentistry without a license and sought an injunction in District Court. The lower court dismissed the injunction action against Kandarian but also dismissed his counterclaim against the Board on the basis that the Board enjoyed quasi-judicial immunity with respect to its actions. The Supreme Court reversed the lower court, holding that the Board did not have immunity for its actions when it sought injunctive relief in District Court. St. v. Kandarian, 248 M 444, 813 P2d 409, 48 St. Rep. 504 (1991). On remand, the District Court did not err in summarily dismissing Kandarian's claims of invasion of privacy, wrongful litigation, intentional interference with business, slander and libel, outrage, intentional infliction of emotional distress, and negligence. St. v. Kandarian, 268 M 408, 886 P2d 954, 51 St. Rep. 1381 (1994).

37-4-301. Qualifications — fees.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) through (3) that read: "(1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination must consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board, which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of a written and practical examination must be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. The examination must include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures"; in (1) after "board" deleted "written"; in (2) after "board" deleted "practical"; deleted former (4)(e) that read: "(e) an examination fee commensurate with costs and set by the board"; in (5) after "fee" deleted "commensurate with costs and set by the board"; deleted former (4)(g) and (4)(h) that read: "(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant"; deleted former (5) through (7) that read: "(5) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.

(6) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(7) The board is authorized to adopt necessary and reasonable rules governing application procedures"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 in (4)(f) substituted "an application fee" for "a licensure fee"; deleted former (5) that read: "(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1987 Amendment: In (1) inserted language in third sentence that changes oral interview from mandatory to discretionary; and at end of fourth sentence inserted "to be administered at times and places approved by the board".

1983 Amendment: In (2) added "periodontics" to exam subjects; inserted (4)(h) referring to copies of other state licenses; in (6) inserted "and passed"; and deleted (9), which read: "The board may in its discretion permit a dental student who has successfully completed his junior year in a recognized dental school and who files proof satisfactory to the board that he has the preliminary education described in this section to take a written examination in the subjects he has completed. Satisfactory grades secured shall be credited on the final examination of the student. The board shall require a fee commensurate with costs and set by the board for this examination, which shall apply on the final examination taken by the applicant."

Statement of Intent: The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, $20 to $25 for dentists and $10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

Administrative Rules

ARM 24.138.402 Fee schedule.

ARM 24.138.502 Initial licensure of dentists by examination.

37-4-302. Recognition of dental schools and dental hygiene schools.

Compiler's Comments

1991 Amendment: Near beginning of first sentence, after "college", deleted "or school and/or a recognized school of dental hygiene" and at end substituted "commission on dental accreditation" for "council on dental education of the American dental association" and inserted second sentence setting criteria for recognition of dental hygiene schools. Amendment effective July 1, 1991.

Administrative Rules

ARM 24.138.504 Approved clinical exam criteria for dentists and dental hygienists.

37-4-307. Notice of name and address change — local fees prohibited.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) through (3) that read: "(1) Each licensed dentist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the renewal fee is not paid in a timely manner.

(3) (a) Except as provided in 37-1-138, in case of default in payment of the renewal fee by a licensee, the license must be forfeited by the licensee. The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for forfeiture, the license may not be forfeited.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each renewal period that they were unpaid, plus a late penalty fee for each renewal period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence"; in (1) near end after "within" substituted "10" for "30"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 in (3)(a) at beginning inserted "Except as provided in 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1999 Amendment: Chapter 230 at end of first sentence in (3)(a) substituted "forfeited by the licensee" for "revoked by the board"; in second and third sentences in (3)(a), in (3)(b), and in (3)(c) substituted "forfeiture" for "revocation"; in (3)(b) and (3)(c) substituted "forfeited" for "revoked"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 492 in (1), in first sentence after "shall pay", deleted "each year"; in (2), in first sentence near beginning and in second sentence, before "renewal fee", deleted "annual" and in first sentence, after "fee must be made", deleted "each year" and inserted "license expiration"; in (3)(a), before "renewal fee", deleted "annual"; in (3)(c)(i), in two places, substituted "renewal period" for "year"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 in (2), in first sentence, substituted "made each year on or before the date set by department rule" for "made prior to March 1 of each year" and in second sentence, after "required", inserted "by the department" and at end substituted "not timely paid" for "not paid before March 1"; deleted former (3) and (4) that read: "(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dentistry because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text that read: "(1) A licensed dentist practicing within this state shall annually pay to the department before March 1, as a renewal fee for the year, a sum set by the board. Notice of the change in the amount of renewal fees shall be given to each dentist registered in this state by the department.

(2) If a registered dentist absents himself from the state for a period of 1 or more years or does not engage in active practice within this state, he may continue his license in good standing by a payment set by the board each year or at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(3) In case of default in payment of the annual renewal fee by a dentist, his license shall be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the renewal fee plus a late payment penalty prescribed by the board before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect renewal fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(4) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state."

1983 Statement of Intent: The statement of intent attached to Ch. 349, L. 1983, provided in part: "Sections 4 and 8 [amending 37-4-307 and 37-4-406] give the Board the authority to adopt rules imposing a demonstration of continued competency for license renewal. The Board is not required to adopt such rules. It is contemplated that a study will be conducted to review other existing program designs in determining a viable means of demonstrating continued competency."

1981 Amendments: Chapter 345 deleted "and not to exceed $50" at end of first sentence in (1). Chapters 345 and 363 deleted "The board may increase or decrease the annual renewal fee to maintain in the earmarked revenue fund at all times an amount, to be known as the emergency fund, to be used for the purpose of administering, policing, and enforcing this chapter. The emergency fund shall be maintained at an approximate level of $2,500" after "a sum set by the board" in (1); Ch. 345 deleted ", not to exceed $25," after "a payment set by the board each year" in (2); substituted "a fee prescribed by the board" for "a fee of $25" in (2); and substituted "penalty prescribed by the board" for "penalty of $10" in the middle of (3).

Fees Prescribed by Board — 1981 Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

1979 Statement of Intent: The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, $20 to $25 for dentists and $10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not (prior to the 1983 amendment of 37-4-307) made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-4-311. Rehabilitation.

Compiler's Comments

2011 Amendment: Chapter 122 substituted "rehabilitation or medical assistance program to assist and rehabilitate licensees" for "protocol for the referral to a board-approved rehabilitation program for licensees"; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 224 near middle substituted "licensees subject to the jurisdiction of the board" for "licensed dentists". Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

37-4-312. Report of incompetence or unprofessional conduct.

Compiler's Comments

2003 Amendment: Chapter 224 in three places in (1) substituted "licensee" for "licensed dentist" or "dentist"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Administrative Rules

ARM 24.138.2719 Relapse.

37-4-322. When publishing professional cards not unprofessional conduct.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

Title 24, chapter 138, subchapter 30, ARM Interpretive rules for advertising.

37-4-325. Witness fees and mileage.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-4-340. Volunteer work — licensure — fee waiver — rules.

Compiler's Comments

Severability: Section 4, Ch. 67, L. 2003, was a severability clause.

Saving Clause: Section 5, Ch. 67, L. 2003, was a saving clause.

Effective Date: Section 6, Ch. 67, L. 2003, provided: "[This act] is effective July 1, 2003."

37-4-341. Licensure of out-of-state volunteer dentists and dental hygienists without examination.

Compiler's Comments

2019 Amendment: Chapter 195 in (4) in first sentence substituted "45 calendar days" for "60 days" and in second sentence substituted "restricted temporary license" for "temporary restricted license"; in (6)(a) and (6)(b) inserted "restricted" before "temporary license"; in (6)(c) substituted "restricted temporary license" for "license"; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2009.

Part 4
Dental Hygienists and Auxiliary Personnel

Part Administrative Rules

ARM 24.138.407 Functions for dental hygienists.
ARM 24.138.503 Initial licensure of dental hygienists by examination.

37-4-401. Practice of dental hygiene — rulemaking.

Compiler's Comments

2017 Amendment: Chapter 288 in (1)(a) substituted "as the board defines and authorizes through rule" for "as the board in writing defines and authorizes"; in (1)(b) near end substituted "agents under the general supervision" for "agents only under the direct supervision"; inserted (1)(c) providing for limited prescriptive authority and rulemaking; in (2) at beginning substituted "Subsection (1)" for "However, this section"; in (2)(a) inserted "other than prescriptions authorized under subsection (1)(c)"; in (2)(d) inserted "other than those listed under subsection (1)(c)"; and made minor changes in style. Amendment effective May 4, 2017.

1991 Amendment: At end of first sentence inserted "and that may be performed under general supervision of a licensed dentist" and in second sentence, after "the agents", inserted "only"; and made minor change in style. Amendment effective July 1, 1991.

1985 Amendment: In opening paragraph inserted second sentence relating to administering local anesthetic.

Statement of Intent: The statement of intent attached to Ch. 449, L. 1985, provided: "The legislature believes that a statement of intent is necessary because this bill authorizes the board of dentistry to make rules to implement the provisions permitting a licensed dental hygienist to administer local anesthetic agents under the direct supervision and authorization of a licensed dentist. The legislature intends that, as a prerequisite to issuance of a certificate to administer local anesthetic agents to a dental hygienist, the board, in addition to other criteria prescribed by 37-4-402, shall determine that the applicant is qualified to administer local anesthetic agents and holds a currently valid certificate to perform cardiopulmonary resuscitation from an agency recognized as qualified to make such certification. The board's rules for license renewal pursuant to 37-4-406 shall also recognize these criteria."

1983 Amendment: In opening paragraph, substituted "services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are" for "the doing by one person for a direct or indirect consideration, with respect to the teeth of another person, an act or service" and inserted "procedures" after "preventive"; and in (2) inserted "other than root planing and subgingival curettage".

Administrative Rules

ARM 24.138.407 Functions for dental hygienists.
ARM 24.138.3219 Permit required for administration of anesthesia.
ARM 24.138.3221 Minimum qualifying standards.

37-4-402. License — examination.

Compiler's Comments

2005 Amendment: Chapter 467 in (2) near end after "rules" substituted "adopted by the board" for "it considers proper"; deleted former (3) and (4) that read: "(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination must consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures"; deleted former (5)(e) that read: "(e) an examination fee commensurate with costs and set by the board"; in (3)(e) after "fee" deleted "commensurate with costs and set by the board"; deleted former (5)(g) and (5)(h) that read: "(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant"; deleted former (6) through (8) that read: "(6) Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 in (5)(f) substituted "an application fee" for "a licensure fee"; deleted former first sentence in (6) that read: "Applications must be submitted no less than 20 days prior to the jurisprudence examination"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1995 Amendment: Chapter 429 in (2) substituted "provided by rules adopted under 37-1-319" for "provided in 37-4-404"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: In (3) in second sentence, after "written part", inserted "and" and after "clinical part", deleted "and an oral interview with the board which may include questions pertaining to the practice of dental hygiene"; in (6) in first sentence, before "jurisprudence examination", deleted "board interview and" and in second sentence, after "jurisprudence examination", deleted "or the oral interview".

1985 Statement of Intent: See compiler's comment under 37-4-401 concerning Ch. 449, L. 1985.

1983 Amendment: Inserted (5)(h) referring to copies of other state licenses; and in (6), inserted second sentence referring to jurisprudence examination.

1979 Statement of Intent: The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, $20 to $25 for dentists and $10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

Administrative Rules

ARM 24.138.503 Initial licensure of dental hygienists by examination.

ARM 24.138.509 Dental hygiene limited access permit.

37-4-405. Dental hygienist to practice under supervision of licensed dentist — exceptions — definitions.

Compiler's Comments

2017 Amendment: Chapter 288 in (3)(b) near beginning after "means treatment" deleted "except the administration of local anesthesia"; in (4)(a) at end inserted "and prescriptive authority as allowed under 37-4-401(1)(c)"; and made minor changes in style. Amendment effective May 4, 2017.

2003 Amendment: Chapter 172 in middle of (1)(a) after "dentist" deleted "in a public or private institution, under a board of health, or in a public clinic authorized by the board"; inserted (1)(b) allowing dental hygienist to provide preventative services in public health facility under supervision of licensed dentist or under public health supervision; in (2) near middle before "supervision" inserted "direct supervision or general"; in (3) substituted "the following definitions apply" for ""supervision" is defined as follows" and inserted definitions of public health facility and public health supervision; inserted (4) providing criteria for when licensed dental hygienist may provide preventative services under public health supervision; inserted (5) requiring dental hygienist practicing under public health supervision to obtain limited access permit from board, requiring board to adopt rules, and limiting services provided under limited access permit to patients or residents of facilities or programs who are unable to receive regular dental care due to age, infirmity, disability, or financial constraints; inserted (6) allowing board to identify by rule additional public health facilities and programs where limited access permit services may be provided; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Near beginning of (1), after "hygienist", inserted "with the permission of the supervising dentist", near middle substituted "under the general supervision" for "but may not practice except under the direct personal supervision", and at end deleted "authorized by the board"; deleted former first sentence of (2) that read: "The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care facility, or a school or public health program after a review of a request for such service and a description of the type of supervision necessary is made by the board"; in (2)(a) substituted definition of direct supervision for former definition that read: "the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment"; in (2)(b) substituted definition of general supervision for former definition that read: "those tasks and procedures that do not require the presence of a dentist on the premises but shall remain under the dentist's directive order, control, responsibility, and evaluation"; deleted former (3) that read: "(3) Notwithstanding any other provisions of this section, a dental hygienist may continue performing tasks and procedures requiring direct supervision if:

(a) the supervising dentist required to be on the premises has been called out of the office briefly for an emergency; and

(b) both the hygienist and the patient consent"; and made minor changes in style. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 66, L. 1991, provided: "The intent of the amendments to 37-4-404(2) [now repealed] is to permit the board of dentistry to establish, within the parameters set by statute, the number of practice hours required for licensure of dental hygienists by credentials.

The intent of the amendments to 37-4-405(1) is to ensure that, except for the administration of local anesthesia, it is up to the discretion of the supervising dentist and not the board to determine if a dental hygienist is to perform the duties referred to in Title 37, chapter 4, under general or direct supervision."

1981 Amendment: Added subsection (3) stating circumstances under which dental hygienist may practice without direct supervision those tasks and procedures that normally require supervision.

Administrative Rules

ARM 24.138.407 Functions for dental hygienists.

37-4-406. Notice of name and address change — local fees prohibited.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) through (3) that read: "(1) Each licensed dental hygienist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required if the renewal fee is not paid in a timely manner.

(3) Except as provided in 37-1-138, in case of default in payment of the renewal fee by any licensee, the licensee shall forfeit the license.

(a) The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) The payment of the renewal fee on or before the time set for forfeiture, with a reasonable late fee set by the board, excuses the default.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each period that they were unpaid, plus a late penalty for each period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence"; in (1) after "within" substituted "10" for "30"; deleted former (5) that read: "(5) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 in (3) at beginning inserted "Except as provided in 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1999 Amendment: Chapter 230 in (3) substituted "licensee shall forfeit" for "board must revoke"; and in first and second sentences in (3)(a), in (3)(b), and in (3)(c) substituted "forfeiture" for "revocation"; in (3)(c) substituted "forfeited" for "revoked"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 492 in (1), in first sentence after "shall pay", deleted "each year"; in (2), in first and second sentences before "renewal fee", deleted "annual" and in first sentence, near middle, inserted "license expiration"; in (3)(c)(i), in two places, substituted "period" for "year"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted third sentence in (1) that read: "The renewal must be for either active or inactive status, as defined by rules of the board"; in (2), in first sentence, substituted "made on or before the date set by department rule" for "made prior to March 1 of each year" and at end of second sentence substituted "not timely paid" for "not paid before March 1"; deleted former (3) and (4) that read: "(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dental hygiene because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Statement of Intent: See compiler's comment under 37-4-401 concerning Ch. 449, L. 1985.

1983 Amendment: Substantially revised and enlarged section (see 1983 Session Law). Text formerly read: "(1) Before March 1 of each year, a licensed dental hygienist shall pay to the department a renewal fee set by the board. In default of payment, the board may, after hearing and on 30 days' notice, revoke the license of the hygienist in default; but the payment of the renewal fee on or before the time of hearing, with an additional sum set by the board excuses the default. The department may collect the fee by suit.

(2) The board may likewise revoke or suspend the license of a dental hygienist for violating this chapter."

1983 Statement of Intent: The statement of intent attached to Ch. 349, L. 1983, provided in part: "Sections 4 and 8 [amending 37-4-307 and 37-4-406] give the Board the authority to adopt rules imposing a demonstration of continued competency for license renewal. The Board is not required to adopt such rules. It is contemplated that a study will be conducted to review other existing program designs in determining a viable means of demonstrating continued competency."

1981 Amendment: Deleted ", not to exceed $25" after "a renewal fee set by the board" in the first sentence of (1); and deleted ", not to exceed $10," after "an additional sum set by the board" in the second sentence of (1).

Fees Prescribed by Board — 1981 Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

1979 Statement of Intent: The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, $20 to $25 for dentists and $10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

37-4-408. Auxiliary personnel — employment, duties, and limitations.

Compiler's Comments

2019 Amendment: Chapter 157 in (1) at end of last sentence inserted exception clause; inserted (2) concerning supervision of a dental auxiliary who holds a certified dental assistant certification; and made minor changes in style. Amendment effective April 18, 2019.

2005 Amendment: Chapter 126 near middle of second sentence after "dentist" deleted "in the dentist's office", after "rule to" substituted "permit" for "provide for delegation by", after "dentist to" inserted "delegate to", after "personnel" inserted "prophylaxis or", and at end after "37-4-401" deleted "or a prophylaxis"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 in last sentence at end after "under the direct supervision of" substituted "a licensed dentist" for "the licensed dentist employing the personnel"; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: Inserted first sentence defining dental auxiliary; and made minor changes in style. Amendment effective July 1, 1991.

1983 Amendment: Changed "shall" to "may" at beginning of first sentence and in last sentence inserted "all" before "dental auxiliaries".

Administrative Rules

ARM 24.138.406 Functions for dental auxiliaries.
ARM 24.138.407 Functions for dental hygienists.

Part 5
Regulatory Provisions

37-4-501. Work order for construction or repair of appliances.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 109 in (1) near end of introductory clause after "forms" deleted "prescribed by the board"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

37-4-511. Limitations regarding deep sedation or general anesthesia.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (1) and (2) that read: "(1) A person engaged in the practice of dentistry or oral surgery may not perform any dental or surgical procedure upon another person if a general anesthetic is administered unless the anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;
(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or
(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1)"; in (1) substituted "deep sedation or" for "light" and at end substituted "trained health care professional" for "person who has been examined by the board or its agent in life support skills and who has demonstrated a satisfactory level of proficiency as established by the board"; deleted former (4) that read: "(4) A person engaged in the practice of dentistry or oral surgery may not administer a general anesthetic to any other person unless the administering person satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications of general anesthesia. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3)"; in (2) in three places inserted "deep sedation or"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

Title 24, chapter 138, subchapter 32, ARM Anesthesia rules.

37-4-515. Hospital admissions — patient histories and examinations.

Compiler's Comments

1987 Statement of Intent: The statement of intent attached to Ch. 313, L. 1987, provided: "This bill may require the department of health and environmental sciences [now department of public health and human services] to amend Rule 16.32.320, Administrative Rules of Montana, or to modify its interpretation of that rule, which incorporates by reference federal regulations governing hospital staffing (42 CFR 405 subpart J). If the federal regulations do not prohibit a hospital from authorizing an oral surgeon to take patient histories and perform physical examinations, no action by the department is contemplated. Because the federal regulations are ambiguous, the department may make appropriate changes in its rules if necessary to administer this act.

Should other dental specialties emerge, with in-hospital training equivalent to that of oral surgeons, the board of dentistry may recognize these specialists as qualified to take patient histories and perform physical examinations."

CHAPTER 6
PODIATRY

Chapter Compiler's Comments

Rules to Remain in Effect: Section 8, Ch. 470, L. 1981 (which chapter transferred the functions of the Board of Podiatry Examiners to the Board of Medical Examiners), provided that "Existing rules of the board of podiatry examiners shall remain in effect unless amended or repealed by the board of medical examiners." Effective July 16, 1982, all rules of the former Board of Podiatry Examiners were either repealed or transferred to the Board of Medical Examiners.

Part 1
General

37-6-101. Definitions.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1995 Amendment: Chapter 402 in definition of podiatrist, in two places, and in one place in definition of podiatry inserted "and ankle".

1989 Amendment: Substituted definition of podiatry for former definition that read: "the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot"; and in definition of podiatrist inserted "diagnose and" and "human functional".

1987 Amendment: In (1) deleted reference to chiropody; and in (2) substituted "a physician or surgeon of the foot, licensed to treat ailments of the foot" for "one practicing podiatry".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (4); changed internal references to the department and the board.

Chapter 470, in (3), substituted reference to the board of medical examiners for reference to the board of podiatry examiners.

Preamble: The preamble to SB 392 (Ch. 470, L. 1981) read: "WHEREAS, the sunset law, sections 2-8-103 [repealed in 1983] and 2-8-112, terminates the Board of Podiatry Examiners and requires a performance evaluation by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Podiatry Examiners be terminated, and that regulation of podiatrists be transferred to the Board of Medical Examiners."

Attorney General's Opinions

Chiropodists (Now Podiatrists) — Prescription of Drugs: Chiropodists (now podiatrists) licensed under the laws of this state legally may prescribe drugs as a part of their professional treatment. However, their right to administer or prescribe drugs is limited to the direct treatment of an ailment of the human foot. (See 1995 amendment.) 29 A.G. Op. 33 (1961). (See 37-6-105.)

37-6-102. Scope of practice.

Compiler's Comments

1995 Amendment: Chapter 402 in (1), in first sentence after "foot", inserted "and ankle" and inserted third sentence defining the ankle.

1989 Amendment: In (1), in first sentence, substituted "A podiatrist may diagnose and treat ailments of the human functional foot by all systems and means" for "A podiatrist may treat ailments of the human foot or toe but may not amputate the human foot or toe or" and inserted second sentence describing functional foot; and made minor changes in form and phraseology.

1987 Amendment: Substituted language limiting practice to treatment of ailments of the foot or toe for "A podiatrist may not amputate the human foot or toe or administer an anesthetic other than local".

37-6-103. Application of chapter.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-6-106. Rulemaking authority.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 540, L. 1991, provided: "A statement of intent is required for this bill because rulemaking authority is provided to the board of medical examiners to administer several licensing functions. It is the intent of the legislature that the board of medical examiners adopt rules to set: a date for annual renewal of licenses to practice podiatry or acupuncture; a date for annual renewal of the certificate issued to a physician assistant-certified; and the amount of the utilization plan approval fee. It is further the intent of the legislature that the board of medical examiners adopt rules to implement the provisions of Title 37, chapter 6, parts 1 and 3."

37-6-107. Certification required for ankle surgery — places of performance of surgery.

Compiler's Comments

1999 Amendment: Chapter 98 in (2) substituted "outpatient center for surgical services" for "ambulatory surgical center". Amendment effective October 1, 1999.

Saving Clause: Section 6, Ch. 98, L. 1999, was a saving clause.

Applicability: Section 7, Ch. 98, L. 1999, provided: "[This act] applies to health care facility licenses or certificates of need issued pursuant to Title 50, chapter 5, after October 1, 1999."

Administrative Rules

ARM 24.156.1003 Ankle surgery certification.

Part 3
Licensing

Part Compiler's Comments

Applicability: Section 12, Ch. 288, L. 1987, provided: "This act applies to applications for a license to practice podiatry received by the board of medical examiners after September 30, 1987."

37-6-301. License required for practice.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: Deleted "chiropodist or" before "podiatrist, or in a sign" and before "podiatrist, foot correctionist".

37-6-302. Qualifications for licensure.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (2)(f) that read: "(f) has obtained a score of at least 75% on an examination administered by the board"; in (3) after "(2)(d)" deleted "and (2)(f)"; and made minor changes in style. Amendment effective October 1, 2011.

1995 Amendment: Chapter 429 deleted (4) through (6) that read: "(4) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of a fee prescribed by the board to the department.

(5) The board may authorize the department to issue a temporary license to practice podiatry in appropriate cases, but no person may be granted a temporary license unless he:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board; and

(d) has made a personal appearance before at least one member of the board.

(6) The board may authorize the department to issue a temporary or permanent license subject to probation or other conditions or limitations imposed by the board or may refuse to issue a license if the applicant has engaged in unprofessional conduct or is otherwise unqualified"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1987 Amendment: In (1) deleted former first sentence that read: "Examinations shall be held at places and times the board directs" and former last sentence pertaining to proof of moral character, education, and passage of the examination; inserted (2) providing general qualifications for licensure; inserted (3) allowing Board to waive the licensure requirements that an applicant make a personal appearance before the Board and obtain a score of at least 75% on an examination administered by the Board; deleted former (3) allowing licensure by the Board upon passage of a national examination and personal interview; inserted (5) allowing for issuance of a temporary license to an applicant who meets stated requirements; and inserted (6) allowing for issuance of a license subject to probation or other conditions or limitations and for refusal of a license.

1981 Amendments: Chapter 345 substituted "by payment of a fee prescribed by the board" for "by payment of $50" near the end of (2); and substituted "upon payment of a fee prescribed by the board" for "upon payment of $50" in (3).

Chapter 470 substituted "board" for "state board of podiatry examiners" in the second sentence of (1).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

37-6-305. Deposit of moneys collected.

Compiler's Comments

1987 Amendment: Substituted "board" for "state board of podiatry examiners".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-6-311. Refusal or revocation of license — investigation.

Compiler's Comments

1997 Amendment: Chapter 490 in (4), in first sentence after "incompetent", deleted "seriously mentally ill, or" and after "narcotics" inserted "or to have been committed pursuant to 53-21-127"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 429 deleted second and third sentences in (1) that read: "The department shall notify the applicant of the board's intent to deny, revoke, or refuse to renew a license by mailing a letter to the applicant's last-known address stating the board's intent and setting a time and place for a hearing. If the applicant fails without cause to appear at the hearing or if the board determines that the applicant is not entitled to a license, the board shall deny, revoke, or refuse to renew the applicant's license"; in (2) substituted "department" for "board"; at beginning of second sentence in (3) inserted "Upon order of the board" and deleted fourth and fifth sentences that read: "If the board has reasonable cause to believe that the alleged conditions exist or that the alleged offenses were committed, the department shall mail to the person at his last-known address a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice";

deleted (4) through (7) that read: "(4) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice podiatry in this state charging him with the commission of any of the offenses set forth in 37-6-310 or with any of the offenses or conditions set forth in subsection (1) or (2) of this section. The complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person complained against, at his last-known address, together with a written citation of the time and place of the hearing on the complaint.

(5) At the hearing the board shall adopt a resolution finding the person complained against guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-6-310 or subsection (1) or (2) of this section do not exist with respect to the person complained against or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-6-310 or in subsection (1) or (2) of this section do exist or the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(6) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent measures taken by the board with respect to that action.

(7) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct or restored to good health and that he has not practiced podiatry in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced podiatry in this state during the term of suspension, the board shall revoke the license at a hearing held in accordance with the notice and procedure provided in subsection (1). The revocation is final"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (4), near beginning of first sentence before "complaint", substituted "written" for "sworn".

1989 Amendment: In (4) and (5) deleted brackets around "37-6-310".

1987 Amendment: Substituted language (see 1987 Session Law) for former text that read: "(1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license for any of the following causes:

(a) fraudulent representation in obtaining the license;

(b) incompetency in practice;

(c) use of untruthful or improbable statements to patients or in advertisements;

(d) habitual intoxication;

(e) unprofessional and immoral conduct; or

(f) selling or giving away alcohol or drugs for an illegal purpose.

(2) However, the board may authorize the department to grant or reissue such license after 6 months if in its judgment the act, acts, or conditions of disqualification have been remedied."

Code Commissioner Correction — Bracketed References: As enacted in Ch. 288, L. 1987, erroneous references were made to "[section 8]" once in (4) and two times in (5). Section 8, Ch. 288, amended 37-6-305 to correct a reference to the "board". Section 9, Ch. 288, seems to have been intended as the reference; section 9 is codified as 37-6-310. Each reference has been bracketed to indicate an error.

Administrative Rules

ARM 24.156.626 Revocation or suspension proceedings.

Attorney General's Opinions

Chiropodists (now Podiatrists) — Prescription of Drugs: Chiropodists (now podiatrists) licensed under the laws of this state legally may prescribe drugs as a part of their professional treatment.

However, their right to administer or prescribe drugs is limited to the direct treatment of an ailment of the human foot. 29 A.G. Op. 33 (1961). (See 1995 amendment to 37-6-102.)

CHAPTER 7
PHARMACY

Chapter Administrative Rules
Title 24, chapter 174, ARM Board of Pharmacy.

Part 1
General

37-7-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 322, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 497 substituted practice pharmacy by means of telehealth for practice telepharmacy as defined term. Amendment effective October 1, 2021.

2019 Amendments — Composite Section: Chapter 130 inserted definition of health information system; and made minor changes in style. Amendment effective October 1, 2019.

Chapter 463 inserted definition of immunization-certified pharmacist; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 33 inserted definitions of FDA and outsourcing facility; in definition of distribute or distribution substituted current definition for former definition that read: ""Distribute" means the delivery of a drug or device by means other than administering or dispensing "; in definition of manufacturing deleted (b) that read: "(b) Manufacturing includes:
(i) any packaging or repackaging;
(ii) labeling or relabeling;
(iii) promoting or marketing; and
(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons"; in definition of prescription drug substituted "section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq." for "section 503(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 353"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

2013 Amendment: Chapter 220 in definition of practice of pharmacy in (b) inserted "except as provided in 37-7-105". Amendment effective October 1, 2013.

2011 Amendments — Composite Section: Chapter 119 in definition of administer in (b) inserted exception clause; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 241 inserted definitions of controlled substance and registry; and made minor changes in style. Amendment effective July 1, 2011.

Severability: Section 18, Ch. 241, L. 2011, was a severability clause.

2009 Amendments — Composite Section: Chapter 293 inserted definition of clinical pharmacist practitioner; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 299 in introductory clause before "this chapter" deleted "parts 1 through 7 of"; inserted definitions of cancer drug, health care facility, health clinic, hospital, long-term care facility, participant, provisional community pharmacy, and qualified patient; and made minor changes in style. Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 293, L. 2009, provided: "WHEREAS, the Medicare Payment Advisory Commission has recommended that the Centers for Medicare and Medicaid Services recognize pharmacists engaging in medication therapy management as practitioners under Medicare, thus permitting those professionals to bill the program independently for their patient care services; and

WHEREAS, the introduction of this federal legislation would require each state to define and articulate requirements necessary for a pharmacist to become clinically certified; and

WHEREAS, the Montana Pharmacy Association hopes to be proactive in having this state legislation ready in anticipation of the federal law; and

WHEREAS, advancing pharmacy practitioners within the state of Montana achieves better patient care and advances national goals for health care reform; and

WHEREAS, pharmacists have demonstrated a large role in producing favorable outcomes with medication therapy management because of their drug knowledge, clinical skills, and access to patients; and

WHEREAS, well-trained, credentialed pharmacists are needed to work with physicians in managing patients with chronic medical conditions requiring a large number of medications; and

WHEREAS, pharmacists play a critical role in health care access to patients, especially in rural Montana."

2001 Amendments — Composite Section: Chapter 388 in introductory clause substituted "As used in parts 1 through 7 of this chapter" for "Unless the context requires otherwise, in parts 1 through 3 of this chapter"; inserted definitions of administer, collaborative pharmacy practice, collaborative pharmacy practice agreement, compounding, confidential patient information, device, dispense or dispensing, distribute, drug utilization review, equivalent drug product, manufacturing, patient counseling, pharmaceutical care, practice of pharmacy, practice telepharmacy, preceptor, prescriber, and prescription drug; throughout definition of drug substituted reference to substance for reference to article, in (a) substituted "recognized as a drug in any official compendium or supplement" for "recognized in the official United States Pharmacopoeia/National Formulary or a supplement", and deleted former (b) that read: "(b) Drug does not include devices or their components, parts, or accessories"; substituted definition of intern for former language that read: ""Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist"; in definition of pharmacist after ""Pharmacist" means" substituted "a person licensed by the state to engage in the practice of pharmacy" for "a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons"; in definition of pharmacy after ""Pharmacy" means" substituted "an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided" for "an established place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold"; in definition of pharmacy technician after "technician" deleted "or auxiliary" and at end deleted "pursuant to an approved utilization plan"; substituted prescription drug order for prescription as defined term, in first sentence after "means an order" substituted "from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name" for "given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name", in second sentence after "classification" substituted "the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed" for "the name of the patient, the name and the quantity of the drug or drugs prescribed", and in third sentence after "apply to" substituted "written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice" for "both written and telephoned prescriptions"; in definition of utilization plan in introductory clause after "technician" deleted "or auxiliary"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; in definition of pharmacy after "department" deleted "of commerce"; (amendment in definition of pharmacy by Ch. 388 rendered amendment by Ch. 483 void) and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 429 deleted definition of continuing education that read: ""Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: Inserted definition of pharmacy technician or auxiliary and definition of utilization plan. Amendment effective January 1, 1992.

1983 Amendment: In (1), substituted "board of pharmacy" for "board of pharmacists".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (5) and (11); changed internal references to the department and the board.

Chapter 379 deleted a reference to the official Homeopathic Pharmacopoeia of the United States from (6)(a)(i); substituted "under the supervision of a registered and licensed pharmacist" for "in a pharmacy having a pharmacist in charge" at the end of (7); deleted the reference to drugstore in the definition of pharmacy in (11); inserted "requiring a prescription" after "drugs" in (11); deleted "at retail" from the end of (11).

Administrative Rules

ARM 24.174.301 Definitions.

ARM 24.174.834 Copy of prescription.

37-7-102. Practice subject to regulation.

Administrative Rules

ARM 24.174.301 Definitions.

ARM 24.174.837 Prescription required for Schedule V.

ARM 24.174.840 Transmission of prescriptions by electronic means.

Title 24, chapter 174, subchapter 21, ARM Renewals and continuing education.

37-7-103. Exemptions.

Compiler's Comments

2023 Amendments — Composite Section — Code Commissioner Correction: Section 8, Ch. 322, L. 2023, in (1) near beginning after "as defined in 37-2-101" inserted "who is not a pharmacist". Amendment effective October 1, 2023.

Section 8, Ch. 759, L. 2023, in first sentence at beginning after "Subject" deleted "only" and after "37-7-402" inserted "and except as provided in Title 37, chapter 18, part 8"; and made minor changes in style. Amendment effective July 1, 2023.

In introductory clause, the Code Commissioner substituted "Title 37, chapter 18, part 8" for "[subsections 1 through 8]" to correct an erroneous reference. The reference to "Title 37, chapter 18, part 8," indicates the complete group of sections codified as new Title 37, chapter 18, part 8.

2021 Amendment: Chapter 454 in introductory clause near beginning after "Subject only to" inserted "37-2-104"; in (1) after "subject" inserted "a medical practitioner, as defined in 37-2-101, or", after "licensed in this state to practice" deleted "medicine, dentistry, or", and after "poisons in the person's practice, or prevent" substituted "a medical practitioner" for "a person who is licensed to practice medicine"; and made minor changes in style. Amendment effective October 1, 2021.

2007 Amendment: Chapter 125 in (7) near middle substituted "contraceptives, other than mifepristone" for "oral contraceptives"; and made minor changes in style. Amendment effective October 1, 2007.

Termination Provision Repealed: Section 1, Ch. 153, L. 2007, repealed sec. 11, Ch. 60, L. 2003, which terminated the 2003 amendments to this section January 1, 2008.

2003 Amendment: Chapter 60 inserted (8) providing that nothing in Title 37, chapter 7, prevents a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia; and made minor changes in style. Amendment effective January 1, 2004, and terminates January 1, 2008.

1995 Amendments: Chapter 418 in (5) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (5) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Inserted (5) allowing dispensing of oral contraceptives under certain circumstances; and made minor changes in phraseology. Amendment effective April 8, 1989.

37-7-104. Qualifications of employee hired to assist board.

Compiler's Comments

2005 Amendment: Chapter 467 in introductory clause near end after "chapter" substituted "must" for "to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall"; in (2) at end after "chapter" deleted "with at least 5 years of practical experience"; and made minor changes in style. Amendment effective July 1, 2005.

37-7-105. Administration of immunizations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 216, L. 2023. Amendment effective April 20, 2023.

2019 Amendment: Chapter 463 in (1)(a)(ii) added pertussis to list of vaccines; inserted (1)(b) permitting immunizations to individuals 7 years of age and older; inserted (2)(b) concerning adverse reaction protocol for a child between 7 and 12; inserted (3) concerning procedure when immunization requires multiple doses over time; inserted (4)(c)(i), (4)(c)(ii), and (4)(c)(iii) concerning requirements for reporting adverse reactions; in (4)(d) near beginning after "care provider"; inserted "if known"; in (4)(e) at the end inserted "or until 7 years after the individual reaches 18 years of age, whichever is later"; inserted (4)(f) concerning reporting immunization data; in (5) deleted definition of immunization-certified pharmacist (see 2019 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 58 in (1)(b) substituted "pneumococcal, tetanus, and diphtheria" for "pneumococcal polysaccharide vaccine and tetanus and diphtheria"; and made minor changes in style. Amendment effective March 1, 2017.

2013 Amendment: Chapter 220 substituted current language regarding immunization by pharmacists for former text that read: "A pharmacist may administer immunization against the influenza virus by injection or inhalation for individuals who are 12 years of age or older". Amendment effective October 1, 2013.

Effective Date: This section is effective October 1, 2011.

37-7-106. Pharmacist prescribing authority — exception.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 2
Board of Pharmacy

Part Administrative Rules

Title 24, chapter 174, subchapter 1, ARM Organizational rules.
Title 24, chapter 174, subchapter 2, ARM Procedural rules.

37-7-201. Organization — powers and duties.

Compiler's Comments

2021 Amendment: Chapter 497 in (2)(l)(iv) near end substituted "pharmacy by means of telehealth" for "telepharmacy". Amendment effective October 1, 2021.

2017 Amendment: Chapter 33 in (2)(a)(iii) before "environment" inserted "including outsourcing facilities, as well as for the"; in (2)(d)(iii) substituted "wholesale distributors" for "wholesale drug distributors"; inserted (2)(d)(iv) concerning third-party logistics providers; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

2011 Amendment: Chapter 122 inserted (2)(i) requiring the establishment of a medical assistance program; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 293 inserted (2)(e) providing that board establish requirements for becoming certified clinical pharmacist practitioner; and made minor changes in style. Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 293, L. 2009, provided: "WHEREAS, the Medicare Payment Advisory Commission has recommended that the Centers for Medicare and Medicaid Services recognize pharmacists engaging in medication therapy management as practitioners under Medicare, thus permitting those professionals to bill the program independently for their patient care services; and

WHEREAS, the introduction of this federal legislation would require each state to define and articulate requirements necessary for a pharmacist to become clinically certified; and

WHEREAS, the Montana Pharmacy Association hopes to be proactive in having this state legislation ready in anticipation of the federal law; and

WHEREAS, advancing pharmacy practitioners within the state of Montana achieves better patient care and advances national goals for health care reform; and

WHEREAS, pharmacists have demonstrated a large role in producing favorable outcomes with medication therapy management because of their drug knowledge, clinical skills, and access to patients; and

WHEREAS, well-trained, credentialed pharmacists are needed to work with physicians in managing patients with chronic medical conditions requiring a large number of medications; and

WHEREAS, pharmacists play a critical role in health care access to patients, especially in rural Montana."

2001 Amendment: Chapter 388 in (2) in introductory clause after "state" substituted "including but not limited to" for "subject to this chapter"; in (2)(a) substituted "establishing minimum standards for" for "determine the minimum"; inserted (2)(a)(ii) through (2)(a)(v) regarding minimum standards for drug purity and quality, specifications for facilities, environment, supplies, technical equipment, personnel, and procedures, monitoring drug therapy, and prescription information; deleted former (2)(c) and (2)(d) that read: "(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia/National Formulary or revisions thereof as the standards"; in (2)(b) before "inspect" deleted "enter and"; in (2)(b)(ii) inserted first two sentences regarding inspection of appropriate records and pharmacy licenses; substituted (2)(c) through (2)(g) regarding regulation of interns, pharmacy technicians, and applicants, issuing certificates, and establishing and collecting fees for former (2)(f) that read: "(f) regulate the practice of interns under national standards"; in (2)(j) after "enforcing" substituted "parts 1 through 7 of this chapter, including but not limited to:

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; and

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines" for "parts 1 through 3 of this chapter"; substituted (3) allowing the board to join professional organizations and associations and establish standards of care for patients for former (3) that read: "(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter;

(c) license wholesale drug distributors;

(d) issue certificates of "certified pharmacy" under this chapter; and

(e) establish and collect license fees"; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: Inserted (3)(c) requiring Department to license wholesale drug distributors; inserted (3)(e) requiring Department to establish and collect license fees; and made minor changes in style. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 134, L. 1991, provided: "A statement of intent is required for this bill because it is anticipated that promulgation of administrative rules will be necessary to implement this bill. This bill is proposed solely to bring Montana standards on licensing wholesale drug distributors into compliance with rules of the federal food and drug administration (FDA). Unless state law complies with FDA requirements by September 1992, federal law would prohibit the distribution of drugs by manufacturers and wholesalers in Montana. In adopting administrative rules, the department of commerce [now department of labor and industry] shall implement the federal Prescription Drug Marketing Act of 1987 as well as guidelines developed by the FDA."

Applicability: Section 13, Ch. 134, L. 1991, provided: "(1) The provisions of [sections 1 through 11] [37-7-201 and Title 37, ch. 7, part 6] are applicable to activities that occur on or after April 1, 1992.

(2) Rulemaking by the board may commence on July 1, 1991, to be applicable on April 1, 1992."

1981 Amendment: Deleted "and drugstore" from the end of (2)(b); and made minor changes in phraseology.

1979 Statement of Intent: The statement of intent adopted with Ch. 291, L. 1979, codified as 45-9-108, provided: "A statement of intent is required for this bill in that in section 3 it delegates authority to the Board of Pharmacy to adopt rules.

House Bill 422 defines the offense of criminal possession of precursors to certain dangerous drugs. The bill provides that its provisions do not apply to those persons or businesses which have a legitimate reason for possessing the precursors. It is possible that certain persons, businesses or research facilities may now or at a later date have a legitimate need for these precursors. The purpose for giving rulemaking authority to the Board of Pharmacy is that it can best determine whether a person, business or research facility has a legitimate need for the precursors. It will also alleviate having to amend the statute in future sessions if it appears that someone is entitled to be exempted from the criminal provisions of the statute."

Administrative Rules

Title 24, chapter 174, ARM Board of Pharmacy.

Case Notes

Person Engaged in Acts Constituting Practice of Pharmacy Subject to Board Regulation and Injunctive Order: The defendant argued that he was not subject to regulation by the board of pharmacy with respect to his business, which was engaged in obtaining out-of-state drugs from unlicensed drug companies for individuals in Montana. The Supreme Court denied the defendant's motion for summary judgment and upheld the lower court's summary judgment in favor of the board, stating that engaging in acts that constitute the practice of pharmacy makes one subject to the board's regulatory powers and subject to injunctive orders. Bd. of Pharmacy v. Kennedy, 2010 MT 227, 358 Mont. 57, 243 P.3d 415.

37-7-202. Salaries and expenses of board members.

Compiler's Comments

1981 Amendment: Deleted "$25 a day as" after "receive"; deleted "for the performance of his services as a board member" after "compensation"; deleted "shall be compensated in addition thereto for" before "travel expenses"; substituted "37-1-103" for "2-18-501 through 2-18-503, in attending meetings"; and made minor changes in punctuation.

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, is located in the compiler's comments under 37-1-133.

Part 3
Licensing

37-7-301. Unlawful practice.

Compiler's Comments

2001 Amendment: Chapter 388 substituted (1) and (2) stating unlawful practices for former (1) through (4) that read: "(1) person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided;

(2) proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department and under the supervision of a registered and licensed pharmacist;

(3) person to assume or pretend to the title of pharmacist or intern unless the person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter;

(4) person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3." Amendment effective October 1, 2001.

1991 Amendment: At beginning inserted exception clause; and made minor changes in style. Amendment effective January 1, 1992.

1981 Amendment: Substituted "registered and licensed by the department, under the supervision of a registered and licensed pharmacist" for "in the temporary absence of such pharmacist" at the end of (2); inserted "under the supervision of a licensed and registered pharmacist" after "registered intern" in (4).

Administrative Rules

ARM 24.174.301 Definitions.

Case Notes

Constitutionality: In prosecution of grocer for selling aspirin without a license, this section was held unconstitutional insofar as it limited to pharmacists the right to sell drugs in manufacturers' original packages. Since the law absolved pharmacists from all responsibility as to purity, strength, and quality of such drugs, restriction of sales to pharmacists did not tend to protect or preserve the public health and hence the act was not a valid exercise of police power. St. v. Stephens, 102 M 414, 59 P2d 54 (1936).

Practice of Pharmacy Proper Subject of Regulation: The practice of pharmacy is a proper subject for police regulation. Johnson v. Great Falls, 38 M 369, 99 P 1059 (1909).

37-7-302. Qualifications — display of license.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) and (2) that read: "(1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination must be set by the board at a figure commensurate with costs. The fee may in the discretion of the board be returned to applicants not taking the examination"; in (1) near middle of first sentence after "Montana-Missoula or" substituted "have received" for "from" and after "degree" deleted "program"; in (2) at end of first sentence after "appropriate" substituted "license" for "certificate attesting the fact"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 deleted former (4) that read: "(4) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter. The fee for registration by reciprocity shall be prescribed by the board"; and made minor changes in style.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: In (2), deleted last sentence, which read: "On again making payment of the fee, an applicant who fails is entitled to take the next succeeding examination free of charge."; and in first sentence of (3), substituted present language for "To be entitled to examination as a pharmacist, the applicant shall be of good moral character and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy accredited by the American council on pharmaceutical education".

1983 Statement of Intent: The statement of intent attached to Ch. 247, L. 1983, provided: "A Statement of Intent is required on House Bill 337 because sections 2 and 3 [amending 2-15-1843 (renumbered 2-15-1733) and 37-7-302] delegate to the Board of Pharmacists power to approve accredited pharmacy degree programs for qualifications for appointment for licensed members on the Board and for qualifications to be entitled for examination as a pharmacist. It is intended that the Board will approve those standards which are at least equivalent to the minimum standards required by the American Council on Pharmaceutical Education. The American Council on Pharmaceutical Education operates as an independent organization, but is recognized by the United States Commissioner of Education, the Department of Health and Human Services, and the Council on Postsecondary Accreditation."

1981 Amendments: Chapter 341 deleted "a citizen of the United States" after "applicant shall be" near the beginning of (3).

Chapter 345 substituted "The fee for registration by reciprocity shall be prescribed by the board" for "The fee for registration by reciprocity is $200" at the end of (4).

Chapter 379 moved the language in former (3), which provided a fee for registration by reciprocity to the end of (4); substituted requirement that applicants be graduates of schools accredited by the council on pharmaceutical education for the requirement that the schools be recognized and approved or a member of the association of colleges of pharmacy in (3); deleted "During this period, if the applicant has passed the examination, he shall be licensed as an intern only." from the end of (3); deleted "If the holder is entitled to manage or conduct a pharmacy in this state for himself or another, the fact shall be set forth in the certificate." from the end of (5).

Coordination With Senate Bill 412: Section 16, Ch. 379, L. 1981, provided: "If Senate Bill 412 introduced in the 47th legislature is passed and approved that portion of section 6, or any other section of this bill, that amends 37-7-302, to provide for a fee for registration by reciprocity is void and of no effect." SB 412 was approved April 15, 1981. As required by this instruction, "The fee for registration by reciprocity shall be prescribed by the board." was substituted in codification for the sentence "The fee for registration by reciprocity is $200." as amended into 37-7-302(4). (Note that such replacement sentence was taken from the amendment to former subsection (3) of 37-7-302 by sec. 15, Ch. 345, L. 1981 (SB 412).)

Fees Prescribed by Board — 1981 Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Citizenship Qualifications — Preamble: The preamble to Ch. 341, L. 1981, provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Administrative Rules

ARM 24.174.401 Fee schedule.
ARM 24.174.501 Examination for licensure as a registered pharmacist.
ARM 24.174.806 License to be posted.

37-7-306. Clinical pharmacist practitioner qualifications.

Compiler's Comments

Preamble: The preamble attached to Ch. 293, L. 2009, provided: "WHEREAS, the Medicare Payment Advisory Commission has recommended that the Centers for Medicare and Medicaid Services recognize pharmacists engaging in medication therapy management as practitioners under Medicare, thus permitting those professionals to bill the program independently for their patient care services; and

WHEREAS, the introduction of this federal legislation would require each state to define and articulate requirements necessary for a pharmacist to become clinically certified; and

WHEREAS, the Montana Pharmacy Association hopes to be proactive in having this state legislation ready in anticipation of the federal law; and

WHEREAS, advancing pharmacy practitioners within the state of Montana achieves better patient care and advances national goals for health care reform; and

WHEREAS, pharmacists have demonstrated a large role in producing favorable outcomes with medication therapy management because of their drug knowledge, clinical skills, and access to patients; and

WHEREAS, well-trained, credentialed pharmacists are needed to work with physicians in managing patients with chronic medical conditions requiring a large number of medications; and

WHEREAS, pharmacists play a critical role in health care access to patients, especially in rural Montana."

Effective Date: This section is effective October 1, 2009.

37-7-307. Utilization plan — contents — responsibility of pharmacist.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 219, L. 1991, provided: "It is the intent of the legislature that the board of pharmacy, to implement [sections 3 through 5] [37-7-307 through 37-7-309], adopt rules that, among other issues, describe the functions that a pharmacist is permitted to delegate to a pharmacy technician or auxiliary, including but not limited to:

(1) removing a stock bottle from the shelf and counting and pouring the contents into a suitable container under direct supervision of a pharmacist;

(2) typing a prescription label and affixing it to a prescription bottle, with a final check and any patient counseling performed by the pharmacist;

(3) entering prescription information into a data processing system under supervision of a pharmacist who must be able to check all entries;

(4) maintaining prescription records, including prescription numbers, refill data, and other information on the patient profile system;

(5) prepackaging unit dose drugs for internal distribution. These prepackage unit dose drugs must be quarantined together with bulk containers until a pharmacist performs a final check and maintains appropriate records.

(6) selling nonprescription drugs in their original containers without engaging in patient counseling;

(7) receiving and checking in pharmaceuticals, including controlled substances, if the pharmacy technician or auxiliary initials and dates all invoices with the actual date the drugs were received;

(8) participating in the biennial inventory of controlled substances, provided a pharmacist supervises the process. The supervising pharmacist must cosign the inventory list with the participating pharmacist and pharmacy technician or auxiliary.

(9) compounding intravenous solutions if a mechanism for verification exists that includes checking of the original order, solutions, additives, dosages, and clarity.

The legislature further intends that the board's rules allow a supervising pharmacist to use the services of only one technician or auxiliary at a time, except that the pharmacist may use two at a time if both are performing any of the following procedures:

(1) intravenous admixture and other sterile product preparation;

(2) filling of unit dose cassettes;

(3) prepackaging; and

(4) bulk compounding."

Effective Date: Section 8(2), Ch. 219, L. 1991, provided: "[Sections 1 through 6] [37-7-101, 37-7-301, 37-7-307 through 37-7-309, and 37-7-323 (37-7-323 now repealed)] are effective January 1, 1992."

37-7-308. Preparation and approval of utilization plan — revocation of or refusal to renew plan — contested case hearing.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 219, L. 1991, provided: "It is the intent of the legislature that the board of pharmacy, to implement [sections 3 through 5] [37-7-307 through 37-7-309], adopt rules that, among other issues, describe the functions that a pharmacist is permitted to delegate to a pharmacy technician or auxiliary, including but not limited to:

(1) removing a stock bottle from the shelf and counting and pouring the contents into a suitable container under direct supervision of a pharmacist;

(2) typing a prescription label and affixing it to a prescription bottle, with a final check and any patient counseling performed by the pharmacist;

(3) entering prescription information into a data processing system under supervision of a pharmacist who must be able to check all entries;

(4) maintaining prescription records, including prescription numbers, refill data, and other information on the patient profile system;

(5) prepackaging unit dose drugs for internal distribution. These prepackage unit dose drugs must be quarantined together with bulk containers until a pharmacist performs a final check and maintains appropriate records.

(6) selling nonprescription drugs in their original containers without engaging in patient counseling;

(7) receiving and checking in pharmaceuticals, including controlled substances, if the pharmacy technician or auxiliary initials and dates all invoices with the actual date the drugs were received;

(8) participating in the biennial inventory of controlled substances, provided a pharmacist supervises the process. The supervising pharmacist must cosign the inventory list with the participating pharmacist and pharmacy technician or auxiliary.

(9) compounding intravenous solutions if a mechanism for verification exists that includes checking of the original order, solutions, additives, dosages, and clarity.

The legislature further intends that the board's rules allow a supervising pharmacist to use the services of only one technician or auxiliary at a time, except that the pharmacist may use two at a time if both are performing any of the following procedures:

(1) intravenous admixture and other sterile product preparation;
(2) filling of unit dose cassettes;
(3) prepackaging; and
(4) bulk compounding."

Effective Date: Section 8(2), Ch. 219, L. 1991, provided: "[Sections 1 through 6] [37-7-101, 37-7-301, 37-7-307 through 37-7-309, and 37-7-323 (37-7-323 now repealed)] are effective January 1, 1992."

Administrative Rules

ARM 24.174.712 Application for approval of utilization plan.
ARM 24.174.714 Inspection of utilization plan and training record.

37-7-309. Utilization plan approval fee — renewal of approval — renewal fee.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 219, L. 1991, provided: "It is the intent of the legislature that the board of pharmacy, to implement [sections 3 through 5] [37-7-307 through 37-7-309], adopt rules that, among other issues, describe the functions that a pharmacist is permitted to delegate to a pharmacy technician or auxiliary, including but not limited to:

(1) removing a stock bottle from the shelf and counting and pouring the contents into a suitable container under direct supervision of a pharmacist;

(2) typing a prescription label and affixing it to a prescription bottle, with a final check and any patient counseling performed by the pharmacist;

(3) entering prescription information into a data processing system under supervision of a pharmacist who must be able to check all entries;

(4) maintaining prescription records, including prescription numbers, refill data, and other information on the patient profile system;

(5) prepackaging unit dose drugs for internal distribution. These prepackage unit dose drugs must be quarantined together with bulk containers until a pharmacist performs a final check and maintains appropriate records.

(6) selling nonprescription drugs in their original containers without engaging in patient counseling;

(7) receiving and checking in pharmaceuticals, including controlled substances, if the pharmacy technician or auxiliary initials and dates all invoices with the actual date the drugs were received;

(8) participating in the biennial inventory of controlled substances, provided a pharmacist supervises the process. The supervising pharmacist must cosign the inventory list with the participating pharmacist and pharmacy technician or auxiliary.

(9) compounding intravenous solutions if a mechanism for verification exists that includes checking of the original order, solutions, additives, dosages, and clarity.

The legislature further intends that the board's rules allow a supervising pharmacist to use the services of only one technician or auxiliary at a time, except that the pharmacist may use two at a time if both are performing any of the following procedures:

(1) intravenous admixture and other sterile product preparation;
(2) filling of unit dose cassettes;
(3) prepackaging; and
(4) bulk compounding."

Effective Date: Section 8(2), Ch. 219, L. 1991, provided: "[Sections 1 through 6] [37-7-101, 37-7-301, 37-7-307 through 37-7-309, and 37-7-323 (37-7-323 now repealed)] are effective January 1, 1992."

37-7-321. Certified pharmacy license — display.

Compiler's Comments

2005 Amendment: Chapter 467 in second sentence near beginning substituted "prescribed form" for "form prescribed by the board"; deleted former fourth and fifth sentences that read: "The renewal fee for a pharmacy must be set by the board. Any default in the payment of the renewal fee after the date the fee is due increases the renewal fee as prescribed by the board", at end of fourth sentence after "issued" deleted "and expires on the date set by board rule", and at beginning of fifth sentence substituted "A person may not operate" for "It is unlawful for a person to conduct"; deleted former (2) that read: "(2) The board may impose discipline or deny or refuse to renew a pharmacy license for reasons specified in and subject to conditions specified in Title 37, chapter 1"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 388 throughout section in three places substituted "board" for "department". Amendment effective October 1, 2001.

1997 Amendment: Chapter 492 in (1), in first sentence near middle, and in fourth sentence, near beginning, before "renewal", deleted "annual"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 at end of sixth sentence in (1) substituted "expires on the date set by department rule" for "expires on June 30 following the date of issue"; in (2) substituted "The board may impose discipline or deny or refuse to renew a pharmacy for reasons specified in and subject to conditions specified in Title 37, chapter 1" for (2) and (3) that read: "The board may suspend, revoke, or refuse to renew a pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter; or

(ii) a violation of the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters;

(d) when the person to whom the license is granted is a natural person whose pharmacist license has been revoked; or

(e) when the pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(3) Before a license can be revoked, the holder is entitled to a hearing by the board"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: In (2)(c)(ii), inserted last clause referring to state statutes and to rules adopted under federal or state statutes.

1981 Amendments: Chapter 345 substituted "an annual fee prescribed by the board" for "an annual fee of $10" near the beginning of former subsection (1); substituted "fee prescribed by the board" for "fee of $100" in the second sentence of (1); deleted "in an amount not to exceed $50" after “board” in the fourth sentence of (1); and substituted “increase the renewal fee as prescribed by the board” for “increase the renewal fee to the sum of $100” in the fifth sentence of (1).

Chapter 362 deleted former subsection (1) relating to the licensing of stores other than pharmacies; deleted “store or” before “pharmacy” in (2) and (2)(e); deleted “(ii) a felony; or” from (2)(c); made minor changes in phraseology.

Chapter 379 deleted the last sentence of former subsection (1) relating to sale of patent or proprietary medicine in original package; deleted “or registered interns” after “registered pharmacists” near the middle of (1); deleted “for a period of 30 days” after “payment of such renewal fee” in the fifth sentence of (1); substituted a citation to the U.S. Code for a citation to the U.S. Statutes at Large in (2)(c)(ii); and deleted “or intern” after “pharmacist” in (2)(d).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler’s comments at 37-1-134.

Administrative Rules

ARM 24.174.401 Fee schedule.

ARM 24.174.501 and 24.174.801 General license requirements.

Title 24, chapter 174, subchapter 11, ARM Institutional pharmacies.

Case Notes

Denial of License — Interest of Physicians in Pharmacy: Where Board of Pharmacists (now Board of Pharmacy) refused to grant license to operate pharmacy on sole ground that building corporation owned by physicians owned 97% of capital stock of applicant, Board was acting beyond its authority as provided by Title 37, ch. 7, since nowhere in the statutes is there any indication, express or implied, of legislative policy to exclude physicians from ownership of pharmacies. Because there is neither grant of power to Board to deny license on basis of ownership by physicians nor a legislative policy to exclude them from ownership, the Board has no authority to do so; furthermore, 37-7-103 indicates an express legislative policy contrary to Board’s action in denying license. Missoula Clinic Pharmacy v. Zimmerman, 153 M 103, 454 P2d 619 (1969).

Sale of Unlabeled Drugs — Suspension for Sale: A pharmacy license may be suspended for a single sale of unlabeled drugs in violation of 37-7-504. W. Drug of Great Falls v. Gosman, 141 M 8, 374 P2d 507 (1962).

37-7-322. Use of words pharmacy, apothecary, drug store, or chemist shop for advertising.

Compiler’s Comments

2001 Amendment: Chapter 388 near middle after ““apothecary”” inserted ““drug store”” and at end substituted “licensed pharmacist” for “registered pharmacist”; and made minor changes in style. Amendment effective October 1, 2001.

Case Notes

Section Unconstitutional: Since a store can sell ordinary household or medicinal drugs under 37-7-103 and 37-7-321, it cannot be deprived of use of word “drug” in advertisement under this section (prior to 1977 amendment) since the law makes no requirement that the registered pharmacist who may use the name “drug” and sell the drugs make any analysis, inspection, or examination of the drug to be passed on by him to the purchasing public. Pike v. Porter, 126 M 482, 253 P2d 1055 (1952).

Unreasonable Classification as Unconstitutional: The provision excluding those who are not registered pharmacists from use of word “drug” (prior to 1977 amendment) in advertising household drugs bears no reasonable relationship to protection of human life, health, or safety but merely discriminates in favor of a certain class and is unconstitutional. Pike v. Porter, 126 M 482, 253 P2d 1055 (1952).

37-7-324. Deposit of fees and fines.

Compiler’s Comments

1987 Amendment: Near beginning, after “chapter”, inserted “except those paid to a justice’s court”.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Part 4
Prescriptions Regulated — Review — Counseling — Identification

37-7-401. Restrictions on prescriptions.

Compiler's Comments

2005 Amendment: Chapter 126 in (3) in second sentence after "refilled" deleted "by a specified amount" and at end of fourth sentence after "originally" substituted "written" for "filled"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 388 in (1) near beginning after "unlawful for any" substituted "authorized prescriber" for "physician, physician assistant-certified, or nurse specialist"; in (3) in fourth sentence after "refilled for more than" substituted "1 year" for "3 years" and in fifth sentence substituted "Schedule II prescription" for "narcotic prescription"; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendments: Chapter 97 near beginning of (1), after "physician", inserted reference to physician assistant-certified.

Chapter 444, in (1), after "physician", inserted "or nurse specialist"; and made minor changes in phraseology and style. Amendment effective July 1, 1989.

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

1981 Amendment: Substituted prohibitory language on refills of prescriptions not having refill instructions for permissive language in subsection (3). Restricted refills to 3 years from the date originally filled.

37-7-406. Standards for prospective drug utilization review and patient counseling.

Compiler's Comments

2001 Amendment: Chapter 388 in (1) deleted third sentence that read: "The sources for the standards must be nationally recognized compendia as the board may designate"; in (2) in second sentence after "Social Security Act" inserted "and administrative rules established by the board"; and made minor changes in style. Amendment effective October 1, 2001.

Preamble: The preamble attached to Ch. 664, L. 1991, provided: "WHEREAS, the United States Congress has enacted a requirement in 42 U.S.C. 1396r-8 of the Social Security Act that states participating in Medicaid institute programs of drug utilization review and patient counseling by pharmacists; and

WHEREAS, similar changes in pharmacy practice could benefit the health and welfare of all Montanans and not just Medicaid recipients, and to that end the Board of Pharmacy should have the authority to set standards for pharmacists concerning drug utilization review and patient counseling, including standards for pharmacists who fill prescriptions by mail order from outside this state."

1991 Statement of Intent: The statement of intent attached to Ch. 664, L. 1991, provided: "A statement of intent is needed for this bill because it grants the board of pharmacy additional regulatory and rulemaking authority. In order to benefit all patient-consumers, the board may adopt rules similar to medicaid regulations governing drug utilization review and patient counseling. The board is also required to adopt rules to regulate the activities of out-of-state mail service pharmacies, including their licensing, reporting requirements, drug utilization review and patient counseling, and site inspections."

Severability: Section 10, Ch. 664, L. 1991, was a severability clause.

Administrative Rules

ARM 24.174.901 Patient records.
ARM 24.174.902 Prospective drug review.
ARM 24.174.903 Patient counseling.

37-7-410. Positive identification required.

Compiler's Comments

Effective Date: Section 7(1), Ch. 89, L. 2019, provided that this section is effective October 1, 2019.

Part 5
Drug Product Selection

Part Compiler's Comments

Severability Clause: Section 12, Ch. 403, L. 1977, was a severability clause.

37-7-502. Definitions.

Compiler's Comments

2017 Amendment: Chapter 42 inserted definitions of biological product and interchangeable biological product; and made minor changes in style. Amendment effective October 1, 2017.

2001 Amendment: Chapter 388 in definition of generic name at end substituted "an official compendium recognized by the board" for "the official United States Pharmacopoeia/National Formulary"; in definition of person substituted "has the same meaning as provided in 37-7-101" for "means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not"; in definition of prescriber after "means a" substituted "medical practitioner, as defined in 37-2-101" for "practitioner" and after "administer" inserted "and prescribe"; in definition of present compendium standard at end substituted "an official compendium recognized by the board" for "the United States Pharmacopoeia/National Formulary"; and made minor changes in style. Amendment effective October 1, 2001.

1981 Amendment: Substituted a reference to the National Formulary for the Homeopathic Pharmacopoeia in (6); and made minor changes in phraseology.

37-7-503. Rulemaking.

Compiler's Comments

1983 Amendment: Substituted "board of pharmacy" for "board of pharmacists".

37-7-504. General prohibition of drug product substitution.

Compiler's Comments

2017 Amendment: Chapter 42 in (1) after "substitute a drug" inserted "product". Amendment effective October 1, 2017.

37-7-505. Product selection permitted — limitation.

Compiler's Comments

2017 Amendment: Chapter 42 inserted (1)(b) regarding substitution of an interchangeable biological product; in (2) after "equivalent drug product" inserted "or interchangeable biological product", after "the specific brand-name drug product" inserted "prescribed or the specific brand-name biological product prescribed", after "indicate to the pharmacists that the" inserted "specific", and near end after "drug product prescribed" inserted "or the specific biological product prescribed"; inserted (3) regarding communication from the pharmacist to the patient; inserted (4) regarding maintaining a record for at least 2 years; and made minor changes in style. Amendment effective October 1, 2017.

2001 Amendment: Chapter 388 in (1) near beginning before "prescription" deleted "written or oral"; in (2) near middle of first sentence after "certifying that" deleted "in his professional judgment"; and made minor changes in style. Amendment effective October 1, 2001.

37-7-506. Notice to purchaser.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-7-509. Limitations on liability.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Part 6

Wholesale Distributors — Licensing

Part Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 134, L. 1991, provided: "A statement of intent is required for this bill because it is anticipated that promulgation of administrative rules will be necessary to implement this bill. This bill is proposed solely to bring Montana standards on licensing wholesale drug distributors into compliance with rules of the federal food and drug administration (FDA). Unless state law complies with FDA requirements by September 1992, federal law would prohibit the distribution of drugs by manufacturers and wholesalers in Montana. In adopting administrative rules, the department of commerce [now department of labor and industry] shall implement the federal Prescription Drug Marketing Act of 1987 as well as guidelines developed by the FDA."

Applicability: Section 13, Ch. 134, L. 1991, provided: "(1) The provisions of [sections 1 through 11] [37-7-201 and Title 37, ch. 7, part 6] are applicable to activities that occur on or after April 1, 1992.

(2) Rulemaking by the board may commence on July 1, 1991, to be applicable on April 1, 1992."

Effective Date: Section 14, Ch. 134, L. 1991, provided: "[This act] is effective July 1, 1991."

Part Administrative Rules

Title 24, chapter 174, subchapter 12, ARM Wholesale drug distributors licensing.

37-7-601. Scope and purpose.

Compiler's Comments

2017 Amendment: Chapter 33 in first sentence after "applies to" deleted "a person or entity engaged in" and after "distribution" inserted "third-party logistics, manufacturing, or repackaging"; in last sentence after "1987" inserted "and the Drug Quality and Security Act of 2013, which includes but is not limited to the Drug Supply Chain Security Act" and after "wholesale" deleted "distributions" and inserted "distribution, third-party logistics, manufacturing, or repackaging"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

37-7-602. Definitions.

Compiler's Comments

2017 Amendment: Chapter 33 inserted definitions of dispenser, repackager, third-party logistics provider, and transaction; deleted definitions that read: ""Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing", ""Blood component" means that part of blood separated by physical or mechanical means", and ""Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug"; in definition of manufacturer substituted current text for former text that read: ""Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device"; in definition of wholesale distribution substituted "wholesale distribution" for "wholesale drug distribution" and in (b) substituted "The term does not include the exclusions listed in section 353(e)(4) of the Drug Supply Chain Security Act, 21 U.S.C. 301, et seq." for "The term does not include:

(i) intracompany sales;

(ii) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(iii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (6)(b)(iv), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

(v) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (6)(b)(v), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

(vi) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(vii) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(viii) the sale, purchase, or trade of blood and blood components intended for transfusion"; in definition of wholesale distributor substituted "wholesale distributor" for "wholesale drug distributor", after "entity" inserted "other than a manufacturer, a manufacturer's colicensed partner, a third-party logistics provider, or a repackager, who is" and after "drugs" deleted "including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

2003 Amendment: Chapter 114 in (6)(b)(iii) after "Code" substituted "26 U.S.C. 501(c)(3), as amended" for "of 1954". Amendment effective October 1, 2003.

2001 Amendment: Chapter 388 in definition of prescription drug substituted "has the same meaning as provided in 37-7-101" for "means any drug for humans that is required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.S. 353)"; and made minor changes in style. Amendment effective October 1, 2001.

37-7-603. Prohibited purchase or receipt of drugs — dispensing and distribution restrictions — penalty.

Compiler's Comments

2017 Amendment: Chapter 33 in (2) substituted "wholesale distributors, third-party logistics providers, manufacturers, and repackagers" for "wholesale drug distributors other than pharmacies" and at end inserted exception clause; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

37-7-604. Wholesale distributor, third-party logistics provider, manufacturer, and repackager licensing requirements — fee — federal compliance.

Compiler's Comments

2017 Amendment: Chapter 33 throughout section in eight places substituted references to wholesale distributor, third-party logistics provider, manufacturer, or repackager for references to wholesale drug distributor; in (2)(a) after "adopted by" inserted "FDA and"; in (4) substituted "An applicant for a license under this section or for a license renewal" for "In order to obtain and maintain a wholesale drug distributorship in this state, an applicant"; in (4)(d) in first sentence before "for at least" deleted "as defined in 37-7-602"; in (4)(e) at beginning inserted "a list of active entity"; in (4)(f) substituted "renewing a license" for "retaining a license"; in (4)(g) substituted "applicant or licensee under this section" for "wholesale drug distributor"; in (6) in first sentence after "guidelines" inserted "and rules" and at end substituted "FDA" for "United States food and drug administration" and in last sentence substituted "an FDA guideline or rule" for "a food and drug administration guideline"; inserted (7) requiring compliance with tracing requirements; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

37-7-605. Out-of-state licensing requirements.

Compiler's Comments

2019 Amendment: Chapter 3 in (3) substituted "out-of-state licensee" for "out-of-state license". Amendment effective October 1, 2019.

2017 Amendment: Chapter 33 in (1) substituted "wholesale distributor, third-party logistics provider, manufacturer, or repackager" for "wholesale drug distributor"; in (3) at end substituted "license" for "wholesale drug distributor"; and in (4) after "out-of-state" substituted "licensee" for "wholesale drug distributor", after "distribute" inserted "prescription", and after "unless the" substituted "wholesale distributor, third-party logistics provider, manufacturer, or repackager" for "distributor". Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

2005 Amendment: Chapter 467 in (2) after "made on" substituted "an approved form" for "a form furnished by the board"; and made minor changes in style. Amendment effective July 1, 2005.

37-7-606. Licenses.

Compiler's Comments

2017 Amendment: Chapter 33 substituted "A license for a wholesale distributor, third-party logistics provider, manufacturer, or repackager" for "The license for wholesale drug distributors". Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

2005 Amendment: Chapter 467 deleted former second sentence that read: "An application for renewal of a license must be mailed to each licensee at least 30 days prior to the renewal date, and if the renewal application and the fee are not mailed by the renewal date, the license is void upon its expiration date." Amendment effective July 1, 2005.

1997 Amendment: Chapter 492 in first sentence, after "effective during the", deleted "12-month". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 in first sentence, after "effective", substituted "during the 12-month period specified by department rule" for "from April 1 to March 31 of the following year"; and in second sentence, after "licensee", substituted "at least 30 days prior to the renewal date" for "on or before March 1" and after "mailed" substituted "by the renewal date" for "by March 31".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

37-7-609. Board access to records.

Compiler's Comments

2017 Amendment: Chapter 33 in two places substituted references to wholesale distributors, third-party logistics providers, manufacturers, and repackagers for references to wholesale drug distributors; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

37-7-610. Rulemaking authority.

Compiler's Comments

2017 Amendment: Chapter 33 in (1) after "part" inserted "including FDA guidelines and rules pursuant to the Drug Quality and Security Act of 2013, which includes the Drug Supply Chain Security Act, 21 U.S.C. 301, et seq., to implement"; inserted (1)(a) concerning requirements compliant with FDA uniform national policy; inserted (1)(b) concerning national standards for licensure; in (2) substituted "wholesale distributor, third-party logistics provider, manufacturer, or repackager guidelines or rules" for "wholesale drug distribution guidelines "and substituted "FDA" for "United States food and drug administration"; and made minor changes in style. Amendment effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

Administrative Rules

Title 24, chapter 174, subchapter 12, ARM Wholesale drug distributors licensing.

37-7-611. Criminal background check for wholesale distributors and third-party logistics providers.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

37-7-612. Bond requirements for wholesale distributors.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

Severability: Section 14, Ch. 33, L. 2017, was a severability clause.

Part 7
Out-of-State Mail Service Pharmacies

Part Compiler's Comments

Preamble: The preamble attached to Ch. 664, L. 1991, provided: "WHEREAS, the United States Congress has enacted a requirement in 42 U.S.C. 1396r-8 of the Social Security Act that states participating in Medicaid institute programs of drug utilization review and patient counseling by pharmacists; and

WHEREAS, similar changes in pharmacy practice could benefit the health and welfare of all Montanans and not just Medicaid recipients, and to that end the Board of Pharmacy should have the authority to set standards for pharmacists concerning drug utilization review and patient counseling, including standards for pharmacists who fill prescriptions by mail order from outside this state."

1991 Statement of Intent: The statement of intent attached to Ch. 664, L. 1991, provided: "A statement of intent is needed for this bill because it grants the board of pharmacy additional regulatory and rulemaking authority. In order to benefit all patient-consumers, the board may adopt rules similar to medicaid regulations governing drug utilization review and patient counseling. The board is also required to adopt rules to regulate the activities of out-of-state mail service pharmacies, including their licensing, reporting requirements, drug utilization review and patient counseling, and site inspections."

Severability: Section 10, Ch. 664, L. 1991, was a severability clause.

Part Administrative Rules

Title 24, chapter 174, subchapter 10, ARM Out-of-state mail service pharmacies.

37-7-701. Legislative declaration.

Compiler's Comments

1995 Amendment: Chapter 274 near middle of second sentence substituted "registered" for "licensed"; and made minor changes in style. Amendment effective March 28, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 274, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the board of pharmacy authority to adopt administrative rules for the registration of out-of-state mail service pharmacies.

It is the intent of the legislature to correct a deficiency in Title 37, chapter 7, part 7 (Chapter 664, Laws of 1991), that arose from a defective attempt to grant rulemaking authority to the board of pharmacy to carry out the provisions regarding out-of-state mail service pharmacies. [Section 4] [37-7-712] is specifically intended to grant rulemaking authority to the board of pharmacy to carry out the purpose and to enforce the provisions of Title 37, chapter 7, part 7. Sections 37-7-701 and 37-7-703 are intended to provide for regulation of out-of-state pharmacies and pharmacists through recognition of the licenses issued by their states of domicile through registration, rather than licensure, by the state of Montana."

Severability: Section 6, Ch. 274, L. 1995, was a severability clause.

1993 Amendment: Chapter 300 near end of second sentence inserted "shall meet the same standards for utilization of technicians as an in-state pharmacy"; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 6, Ch. 300, L. 1993, was a severability clause.

37-7-703. Registration requirements.

Compiler's Comments

1997 Amendment: Chapter 492 in introductory clause, near middle after "in this state and for", substituted "the renewal" for "annual renewal"; and in (5) substituted "a periodic renewal" for "annual renewal" and at end inserted "and at a time established by the department by rule". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 274 in introductory clause, in three places, substituted reference to registration for reference to licensure; at beginning of (1)(a) substituted "shall submit a certificate from the appropriate licensing authority with which it is currently" for "must be"; at beginning of (2), after "shall", substituted "register with" for "submit an application in form and content as determined by", after "location" inserted "including the names and titles of the corporate officers", and after "pharmacist" inserted "licensed in the state in which the pharmacy is located who is"; in (3) substituted second sentence regarding supervision of supportive persons for former language that read: "Any plan that has a ratio of technicians to pharmacists greater than the maximum ratio allowed for an in-state retail pharmacy under the board's rules must be approved by the board as provided in 37-7-307 through 37-7-309"; in (4) at beginning after "shall", substituted "submit to" for "register each pharmacist identified under subsection (2) with" and near middle, after "if any", inserted "for each pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone service referenced in 37-7-706 in order to comply with all information requests by the board"; in (5) substituted "registration" for "license"; and made minor changes in style. Amendment effective March 28, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 274, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the board of pharmacy authority to adopt administrative rules for the registration of out-of-state mail service pharmacies.

It is the intent of the legislature to correct a deficiency in Title 37, chapter 7, part 7 (Chapter 664, Laws of 1991), that arose from a defective attempt to grant rulemaking authority to the board of pharmacy to carry out the provisions regarding out-of-state mail service pharmacies. [Section 4] [37-7-712] is specifically intended to grant rulemaking authority to the board of pharmacy to carry out the purpose and to enforce the provisions of Title 37, chapter 7, part 7. Sections 37-7-701 and 37-7-703 are intended to provide for regulation of out-of-state pharmacies and pharmacists through recognition of the licenses issued by their states of domicile through registration, rather than licensure, by the state of Montana."

Severability: Section 6, Ch. 274, L. 1995, was a severability clause.

1993 Amendment: Chapter 300 an end of first sentence inserted "of pharmacy"; in (2), after "location", inserted "of the out-of-state mail service pharmacy", before "pharmacist" deleted "licensed", and after "in charge of" inserted "dispensing prescriptions for shipment to Montana"; inserted (3) requiring submission of a utilization plan; inserted (4) requiring registration of pharmacists; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 6, Ch. 300, L. 1993, was a severability clause.

Administrative Rules

ARM 24.174.1001 Registration of out-of-state mail service pharmacies.

ARM 24.174.1002 Conditions of registration.

37-7-712. Rulemaking authority.

Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 274, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the board of pharmacy authority to adopt administrative rules for the registration of out-of-state mail service pharmacies.

It is the intent of the legislature to correct a deficiency in Title 37, chapter 7, part 7 (Chapter 664, Laws of 1991), that arose from a defective attempt to grant rulemaking authority to the board of pharmacy to carry out the provisions regarding out-of-state mail service pharmacies. [Section 4] [37-7-712] is specifically intended to grant rulemaking authority to the board of pharmacy to carry out the purpose and to enforce the provisions of Title 37, chapter 7, part 7. Sections 37-7-701 and 37-7-703 are intended to provide for regulation of out-of-state pharmacies and pharmacists through recognition of the licenses issued by their states of domicile through registration, rather than licensure, by the state of Montana."

Severability: Section 6, Ch. 274, L. 1995, was a severability clause.

Effective Date: Section 7, Ch. 274, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 28, 1995.

Administrative Rules

Title 24, chapter 174, subchapter 10, ARM Out-of-state mail service pharmacies.

Part 14
Donated Drugs and Devices Program

37-7-1401. Programs for donation of unused prescription drugs, cancer drugs, and devices — rulemaking required.

Compiler's Comments

2009 Amendment: Chapter 299 in (4)(a) substituted "the collection, receipt, and storage of donated drugs and devices" for "collection and receipt of donated prescription drugs from residents of long-term care facilities, keeping of those drugs within the long-term care facility"; in (4)(b) substituted "transfer of prescription drugs donated by a long-term care facility" for "transfer of the drugs"; in (4)(c) at end substituted "prescription drugs donated by long-term care facilities" for "drugs"; inserted (4)(d), (4)(e), and (4)(f) requiring rules to address eligibility criteria for participants, administrative forms, and acceptable categories of cancer drugs and devices; in (4)(g) substituted "prescription drugs donated by a long-term care facility" for "drugs"; inserted (4)(h) requiring rules to address maximum handling fees; deleted former (5) that read: "(5) As used in this part, the following definitions apply:

(a) "Long-term care facility" has the meaning provided in 50-5-101.

(b) "Provisional community pharmacy" means the practice of pharmacy at a site that has been approved by the board, including but not limited to federally qualified health centers as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(c) "Qualified patients" mean persons who are uninsured, indigent, or have insufficient funds to obtain needed prescription drugs"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Dates: Section 5, Ch. 362, L. 2001, provided that subsection (4) of this section is effective on passage and approval. Approved April 23, 2001. The remainder of this section is effective October 1, 2001.

37-7-1402. Identifying information to be deleted from donated drugs or devices.

Compiler's Comments

2009 Amendment: Chapter 299 at beginning substituted "A person or entity donating a prescription drug, a cancer drug, or a device" for "A long-term care facility donating a prescription drug", near middle after "drug" inserted "or device", and after "by which" substituted "the person for whom the drug or device was prescribed" for "the long-term care facility resident or former resident for whom the drugs were prescribed"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: This section is effective October 1, 2001.

37-7-1403. Cancer drug repository program — donations — registry.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

37-7-1404. Cancer drugs or devices accepted or dispensed — conditions.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

37-7-1405. Participants — duties — fee authorized.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

37-7-1408. Donated drugs and devices — immunity.

Compiler's Comments

2009 Amendment: Chapter 299 in (1) after "prescription drug" inserted "a cancer drug, or a device" and after "drug" inserted "or device"; inserted (2) and (3) creating civil and criminal immunity for certain persons or entities who donate, accept, distribute, or dispense cancer drugs or devices and establishing limits on immunity granted under section; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: This section is effective October 1, 2001.

Part 15

Prescription Drug Registry

Part Compiler's Comments

Severability: Section 18, Ch. 241, L. 2011, was a severability clause.

Effective Date: Section 19, Ch. 241, L. 2011, provided that this part is effective July 1, 2011.

37-7-1503. Prescription drug registry — registration and reporting requirements.

Compiler's Comments

2019 Amendments — Composite Section: Chapters 89 and 130 inserted (1) requiring certain persons licensed under Title 37 to register to use the prescription drug registry at the time of initial licensure or renewal of licensure; and made minor changes in style. Amendments effective October 1, 2019.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

37-7-1506. Providing prescription drug registry information.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 405, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 130 inserted (6) regarding requirements for registry information to be integrated into a health information system; and made minor changes in style. Amendment effective October 1, 2019.

37-7-1511. Prescription drug registry — funding.

Compiler's Comments

2019 Amendment: Chapter 130 in (1) substituted current text for former text that read: "Each person licensed under Title 37 who is authorized to prescribe, dispense, or distribute controlled substances shall pay to the board a nonrefundable fee that is set by rule commensurate with costs, not to exceed $30." Amendment effective October 1, 2019.

Termination Provision Repealed — Code Commissioner Explanation: Section 5, Ch. 130, L. 2019, repealed secs. 1 and 2, Ch. 13, L. 2017, which terminated subsection (1) of this section June 30, 2019. Effective October 1, 2019.

Because Ch. 130 did not include an effective date, it takes effect on October 1, 2019, which is after the June 30, 2019, termination date, so the 2017 provisions could potentially be construed to have terminated subsection (1). Because the sole purpose of section 5 of Ch. 130, L. 2019, was to make subsection (1) of this section permanent, the code commissioner has not terminated subsection (1).

Extension of Termination Date: Sections 1 and 2, Ch. 13, L. 2017, amended sec. 20, Ch. 241, L. 2011, and sec. 2, Ch. 357, L. 2015, by extending the termination date of subsection (1) of this section imposed by those sections to June 30, 2019. Effective February 13, 2017.

2015 Amendment: Chapter 357 in (1) substituted "is authorized to prescribe, dispense, or distribute" for "prescribes, dispenses, or distributes" and substituted "commensurate with costs, not to exceed $30" for "and that may not exceed $15". Amendment effective July 1, 2015.

Extension of Termination Date: Section 2, Ch. 357, L. 2015, amended sec. 20, Ch. 241, L. 2011, by extending the termination date of subsection (1) of this section imposed by Ch. 241 to June 30, 2017. Effective July 1, 2015.

Termination: Section 20, Ch. 241, L. 2011, provided that subsection (1) of this section terminates July 1, 2015.

37-7-1513. Unlawful acts — unprofessional conduct — civil penalties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 366, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 535 in (5) at end deleted "or, if mutually agreed on by the parties in the action, in the district court of the first judicial district". Amendment effective October 1, 2021.

37-7-1514. Report to legislature.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 69, Ch. 261, L. 2021. Amendment effective April 20, 2021.

37-7-1515. Mandatory use of prescription drug registry.

Compiler's Comments

Effective Date: Section 7(2), Ch. 89, L. 2019, provided that this section is effective July 1, 2021.

CHAPTER 8
NURSING

Chapter Administrative Rules

Title 24, chapter 159, ARM Board of Nursing.

Chapter Case Notes

Crime of Sexual Assault as Unprofessional Conduct and Crime Relating to Public Health, Welfare, and Safety — Lack of Rehabilitation: Gilpin was convicted of two counts of sexual assault. After his nursing license was revoked, Gilpin appealed, claiming that there was insufficient connection between the reason for his criminal conviction and the practice of nursing to warrant revocation of the license. The Supreme Court affirmed the hearing examiner's finding that the sexual assaults related to the public health, welfare, and safety and that Gilpin was guilty of unprofessional conduct. Gilpin v. Bd. of Nursing, 254 M 308, 837 P2d 1342, 49 St. Rep. 831 (1992), overruled in Erickson v. St., 282 M 367, 938 P2d 625, 54 St. Rep. 395 (1997).

Part 1
General

37-8-101. Purpose.

Compiler's Comments

2005 Amendment: Chapter 126 in (1) and (2) after "state" substituted "shall" for "for compensation or personal gain is required to"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 448 in (2) at beginning deleted "In order to safeguard life and health, any person practicing or offering to practice"; inserted (3) requiring a person practicing or offering to practice as medication aide to submit evidence that the person is qualified and licensed; and made minor changes in style. Amendment effective October 1, 2003.

Attorney General's Opinions

Board of Nursing — Authority Over Nursing — Related Subjects: The Board of Nursing lacks authority to require approval of schools and courses which teach nursing-related subjects but which do not prepare students for licensure as registered or licensed practical nurses. 38 A.G. Op. 24 (1979).

37-8-102. Definitions.

Compiler's Comments

2011 Amendment: Chapter 392 substituted "Medication aide I" for "Medication aide" as defined term and near middle after "by a physician" substituted reference to naturopathic physician and other medical providers for "an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist"; inserted definition of medication aide II; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 502 in definition of practice of practical nursing in second and third sentences near middle after "physician" inserted "naturopathic physician, physician assistant, optometrist"; in definition of practice of professional nursing in third sentence near middle after "physicians" inserted "naturopathic physicians, physician assistants, optometrists"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendment: Chapter 467 in definition of advanced practice registered nurse at end after "37-8-202" deleted "(5)(a)"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 317 in definition of practice of nursing at end substituted "the practice of practical nursing and the practice of professional nursing" for "two classes of nursing service and activity, as follows"; in definition of practice of practical nursing in (a) and in definition of practice of professional nursing near beginning after "the performance" deleted "for compensation"; and made minor changes in style. Amendment effective April 14, 2003.

Chapter 448 inserted definition of medication aide; and made minor changes in style. Amendment effective October 1, 2003.

Name Change: Pursuant to sec. 12, Ch. 54, L. 2003, a name change section, the code commissioner in definition of medication aide substituted "assisted living facility" for "personal-care facility".

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 136 in definition of practice of practical nursing inserted last sentence referring to services of a charge-nurse capacity in certain long-term care facilities. Amendment effective March 25, 1997.

1995 Amendment: Chapter 308 in definition of nursing education program, in (b), substituted "vocational-technical institution" for "vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 584 inserted definition of advanced practice registered nurse; in definition of practice of practical nursing, in second sentence near middle, inserted "advanced practice registered nurse"; and in definition of practice of professional nursing, in third sentence near middle, inserted "advanced practice registered nurses" and in fifth sentence substituted "subsection (5)(b)" for "subsection (4)(b)".

1989 Amendment: In second sentence of (3)(b), after "procedures", deleted "leading to predictable outcomes".

1981 Amendments: Chapter 248 completely rewrote this section. For former text, see sec. 1. Ch. 180, L. 1975.

Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Administrative Rules

ARM 24.159.301 Definitions.

Attorney General's Opinions

Board of Nursing — Authority Over Nursing — Related Subjects: The Board of Nursing lacks authority to require approval of schools and courses which teach nursing-related subjects but which do not prepare students for licensure as registered or licensed practical nurses. 38 A.G. Op. 24 (1979).

Paramedical Specialist to Be Licensed to Practice Nursing: A paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act. If a paramedical specialist practices nursing without being licensed, he is subject to the penal provisions of this Act. 36 A.G. Op. 18 (1975).

37-8-103. Exemptions — limitations on authority conferred.

Compiler's Comments

2005 Amendment: Chapter 519 in (1)(k) and (3)(b)(i) substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

2001 Amendment: Chapter 454 inserted (1)(k) concerning the provision of nutrition, including prescribed supplements and medications administered by a gastrostomy or jejunostomy tube; in definition of health care professional substituted "advanced practice registered nurse" for "nurse practitioner"; and made minor changes in style. Amendment effective April 30, 2001.

1995 Amendment: Chapter 525 inserted (3) providing that this chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability and defining health care professional, health maintenance activities, and physician for purposes of the subsection; and made minor changes in style.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

1993 Amendment: Chapter 584 inserted (1)(j) concerning delegated nursing tasks; and made minor changes in style.

1983 Amendment: Inserted (1)(i) referring to execution of death sentence.

1981 Amendment: Substituted "nursing education programs" for "schools of nursing or approved courses or by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following their graduation" in (1)(d).

Administrative Rules

ARM 24.159.1021 Temporary practice permit for licensed practical nurses.

ARM 24.159.1221 Temporary practice permit for registered nurses.

Part 2
Board of Nursing

Part Administrative Rules

Title 24, chapter 159, subchapter 1, ARM Organizational rules.

Title 24, chapter 159, subchapter 2, ARM Procedural rules.

Title 24, chapter 159, subchapter 16, ARM Delegation.

37-8-201. Seal — board records public — legal counsel.

Compiler's Comments

1981 Amendment: Deleted "under each administration" following "its acts" in (1).

Attorney General's Opinions

Right to Know: The Board of Nursing must issue lists of registered nurses and licensed practical nurses to members of the public who wish to purchase them. 35 A.G. Op. 27 (1973).

37-8-202. Organization — meetings — powers and duties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 291, L. 2023. Amendment effective July 1, 2023.

2015 Amendment: Chapter 406 in (1)(j) near beginning substituted "licensees" for "licensed nurses". Amendment effective October 1, 2015.

2011 Amendments — Composite Section: Chapter 122 in (1)(j) in first sentence after "establish a" inserted "medical assistance", substituted "physically or mentally impaired" for "impaired by mental illness", substituted "addictive" for "narcotic", and at end inserted "or by mental illness or chronic physical illness", inserted third sentence regarding in-state participation of licensee in medical assistance program, and in last sentence after "funding this" inserted "medical assistance"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 173 inserted (1)(i) providing rulemaking authority to define criteria for recognition of registered nurses. Amendment effective July 1, 2011.

2009 Amendment: Chapter 109 in (1)(i) near beginning after "found to be" deleted "physically or mentally", after "impaired by" inserted "mental illness", and in second sentence after "treatment for" inserted "mental illness or"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2007 Amendment: Chapter 44 in (1)(h) in two places substituted reference to advanced practice registered nurse for reference to nurse specialist. Amendment effective October 1, 2007.

2005 Amendment: Chapter 467 in (1)(a) before "members" deleted "nine"; in (1)(b) deleted former second sentence that read: "The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board"; deleted former (2) that read: "(2) The board may make rules necessary to administer this chapter"; in (1)(e) deleted former second sentence that read: "The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants"; deleted former (3) that read: "(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter"; inserted (1)(h) requiring the board to adopt rules regarding authorization for prescriptive authority of nurse specialists; inserted (1)(i) requiring the board to establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance; deleted former (5)(b) that read: "(b) The board shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted"; deleted former (7) that read: "(7) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program"; inserted (2)(e) allowing the board to adopt rules necessary to administer this chapter; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 448 inserted (6) authorizing board to establish qualifications for licensure of medication aides, to define levels of licensure, and to limit the types of drugs that may be administered and the method of administration; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 492 deleted former third sentence that read: "A majority of the board constitutes a quorum at any meeting"; in (5)(b) near beginning after "The board" deleted "of nursing and the board of medical examiners, acting jointly"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 422 in (5)(a), in first sentence after "applicable to", inserted "recognition of" and in fourth sentence, after "certified", inserted "or in the process of being certified". Amendment effective April 13, 1995.

1993 Amendment: Chapter 584 throughout (5)(a) substituted references to advanced practice registered nurses for references to specialty areas of nursing and at end inserted "and clinical nurse specialists"; inserted (7) concerning adoption of rules for delegation of nursing tasks; inserted (8) concerning funding of additional staff; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 584, L. 1993, provided: "A statement of intent is required for this bill because it delegates to the board of nursing the authority to adopt rules regarding the delegation of nursing tasks to unlicensed persons.

The legislature intends that the board of nursing adopt rules that would regulate the situations in which a licensed nurse may delegate tasks to an unlicensed person. This rulemaking authority is necessary in order to distinguish between situations in the nursing practice when it is appropriate to delegate tasks, on the one hand, and situations when delegation is inappropriate due to the nature of the task under consideration. It is not intended that the board of nursing regulate the unlicensed individuals themselves."

1991 Amendment: In second sentence of (5)(b) substituted "board" for "boards"; and made minor changes in style. Amendment effective April 1, 1991.

1989 Amendments: Chapter 430 inserted (6) relating to a program to assist licensed nurses with alcohol or drug problems. Amendment effective July 1, 1989.

Chapter 444 inserted (5)(b) authorizing prescriptive authority; and made minor changes in phraseology. Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 444, L. 1989, provided: "A statement of intent is required for this bill because it grants authority to the board of nursing [and board of medical examiners, acting jointly] to adopt rules regarding prescriptive authority for certain nurse specialists. At a minimum, it is intended that the rules address:

(1) criteria for granting prescriptive authority to an applicant for recognition as a nurse specialist who requests prescriptive authority as a condition of practice;

(2) a procedure for granting prescriptive authority to nurse specialists already recognized by the board on July 1, 1989, upon request of the nurse specialist;

(3) a process to notify the board of pharmacy when prescriptive authority is granted to a nurse specialist;

(4) continuing education requirements for nurse specialists who are granted prescriptive authority, with respect to the use of medical therapeutics in the area of practice; and

(5) appropriateness of the authority to prescribe specific drugs based on the nurse's area of specialty."

The bracketed language was added to the first sentence of the statement of intent by the annotator to reflect the amendment to the title of Ch. 444, L. 1989, and the substance of 37-8-202 that was not amended into the statement of intent. The bracketed language is unofficial but has been inserted to avoid misinterpretation by the code user.

1987 Amendment: In (5) substituted "The applicant must be certified by a specialty area certifying body" for "certified by the American nurses' association".

1981 Amendment: Completely rewritten. For former text, see sec. 2, Ch. 180, L. 1975.

1981 Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. Section 7 allows the board of nursing to approve certain programs related to registration and licensure and the section also permits the board to define the educational requirements and other qualifications applicable to specialty areas of nursing. It is the intent of the legislature that the rules adopted by the board pursuant to these delegations of rulemaking power be sufficient to ensure the competency of those practicing nursing in Montana. Program approval rules are intended to be as described in the following paragraph. Rules concerning specialty areas should address the overall nature of the required courses, the approval of such courses through American Nurses' Association certification or by other means, and the prohibition of the use of a title indicating a nursing specialty by a person not approved by the board as such a specialist. . . ."

Case Notes

Amendment to Board of Nursing Rule Not Redefining or Expanding Scope of Practice of Certified Registered Nurse Anesthetists — No MAPA Violation in Adoption of Rule: Plaintiffs asserted that the Board of Nursing improperly revised ARM 8.32.303 (renumbered ARM 24.159.1480) regarding the scope of practice of certified registered nurse anesthetists (CRNAs) and violated provisions of the Montana Administrative Procedure Act (MAPA) regarding an inadequate statement of reasonable necessity and improper notice. The Supreme Court disagreed. The notice for the rule in question stated that amendments would address the independent practice of CRNAs, but the actual amendment merely clarified existing CRNA practice and dealt with prescriptive authority. Nevertheless, even though the Board of Nursing did not fully comply with the requirement for a statement of necessity reflecting the proposed amendment, the Board substantially complied by putting the public on notice of the proposed amendment and permitting observation of and participation in the amendment process. Plaintiffs had notice of the proposed amendment and actively participated in the process by attending the public hearing and voicing their opposition to the amendment. Thus, the District Court did not err in holding that the amendments to ARM 8.32.303 did not redefine or expand the scope of practice of CRNAs or violate MAPA. Mont. Soc'y of Anesthesiologists v. Bd. of Nursing, 2007 MT 290, 339 M 472, 171 P3d 704 (2007).

Attorney General's Opinions

Board of Nursing — No Authority to Require College Degree for Licensure: The Legislature did not intend to require nursing license applicants to hold a specific college degree, as is evidenced by the fact that the Legislature did not set forth this requirement in statute as it did for other license qualifications statutes, and by the fact it permits nursing educational programs to be located in educational institutions which could not confer the minimum proposed degrees. Therefore, the Board of Nursing does not have authority to adopt a rule requiring a specific college degree as a qualification for licensure. 41 A.G. Op. 23 (1985).

Board of Nursing — Authority Over Nursing — Related Subjects: The Board of Nursing lacks authority to require approval of schools and courses which teach nursing-related subjects but which do not prepare students for licensure as registered or licensed practical nurses. 38 A.G. Op. 24 (1979).

37-8-203. Compensation of members — expenses.

Compiler's Comments

1981 Amendment: Substituted "receive compensation" for "be paid mileage"; and substituted "37-1-133" for "2-18-501 through 2-18-503 and, in addition, $25 per day for each day actually engaged in the discharge of duties under this chapter, including the time spent in actual attendance at a meeting of the board and in direct travel to and from meetings and a reasonable number of days for the preparation and administration of examinations".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-8-204. Executive director.

Compiler's Comments

2005 Amendment: Chapter 467 inserted (2) establishing qualifications for the executive director; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 deleted former (2) that read: "(2) The executive director must be:

(a) a citizen of the United States;

(b) a graduate of an approved school of nursing;

(c) a holder of at least a master's degree with postgraduate courses in nursing;

(d) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing"; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendment: Chapter 584 in (1), at beginning, substituted "The department shall hire an executive director" for "Any secretary hired by the department"; at end of (1)(c) deleted "for the board shall be"; inserted introductory clause of (2) concerning executive director; and made minor changes in style.

1981 Amendment: Deleted "shall first be approved by the board and" before "shall be" at the end of the introductory clause.

Part 3
Schools of Nursing

37-8-301. Nursing education programs — application for approval.

Compiler's Comments

1981 Amendment: Substituted "nursing education program in the state" for "school of professional or practical nursing" in the first sentence; substituted the language in first sentence following "submit evidence that" for former subsections (1) and (2) that required evidence that a nursing school "is prepared to carry out the prescribed basic professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and it is prepared to meet other standards established by this law and by the board".

Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. . . . Section 8 grants the Board authority to adopt rules relating to the conduct of nursing education programs. It is the intent of the Legislature that the rules adopted relate directly toward the nursing education programs insuring that the qualifications of a professional nurse or a practical nurse are adequate in the areas of services to be provided specified in section 4. . . ."

Administrative Rules

Title 24, chapter 159, subchapter 6, ARM Nursing education programs.

37-8-302. Nursing education programs — survey and approval.

Compiler's Comments

1981 Amendment: Completely rewritten (see 1981 Session Law). Former section read: "Schools of nursing — survey and approval. (1) A survey of the school and institution or institutions with which the school is to be affiliated shall be made by the department, which shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

(2) When the board determines that an approved school of nursing is not maintaining the standards required by law and by the board, notice in writing specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing."

Administrative Rules

ARM 24.159.609 Program evaluation.

Part 4
Licensing

Part Case Notes

Jurisdiction Over Lapsed License: In 1987, Gilpin was convicted on two counts of sexual assault. In 1990, Gilpin's nursing license lapsed for failure to renew. In 1990, the Board of Nursing sought to revoke Gilpin's nursing license. The parties submitted an agreed statement of facts to a hearing examiner who submitted findings, conclusions, and a recommendation to the Board. The Board heard Gilpin's objections orally and in writing, adopted the hearing examiner's recommendations, and revoked the license. Gilpin then appealed to the District Court, which heard the parties' arguments and issued an order affirming the revocation of the license. The Supreme Court held that because the Board has power to reinstate a nursing license 3 years after it lapses, the Board retains jurisdiction over a license 3 years after it lapses. Thus, the Board did not lose jurisdiction over Gilpin's license and had jurisdiction to revoke the license. The Supreme Court also held that the stipulation of facts was a sufficient factual basis to revoke the license and that Gilpin was not entitled to any hearings in addition to those that he was given. Gilpin v. Bd. of Nursing, 254 M 308, 837 P2d 1342, 49 St. Rep. 831 (1992).

Part Attorney General's Opinions

Board of Nursing — Authority Over Nursing — Related Subjects: The Board of Nursing lacks authority to require approval of schools and courses which teach nursing-related subjects but which do not prepare students for licensure as registered or licensed practical nurses. 38 A.G. Op. 24 (1979).

Paramedical Specialist to Be Licensed to Practice Nursing: A paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act. If a paramedical specialist practices nursing without being licensed, he is subject to the penal provisions of this Act. 36 A.G. Op. 18 (1975).

37-8-401. Unlawful to indicate licensure without valid license.

Administrative Rules

Title 24, chapter 159, subchapter 12, ARM Registered nurses.

Case Notes

District Court Reversal of Board of Nursing Decision Upheld: White was refused licensing by endorsement under 37-8-417 (now repealed) by the Board of Nursing (Board) because although he was licensed as a practical nurse by New York State, he had not graduated from a practical nursing school. Instead, as is permitted in New York, he had taken the licensed practical nurse examination after completion of a substantial portion of a registered nursing program. The Supreme Court affirmed the District Court's ruling that the Board must issue the license. The Board's interpretation of 37-8-415 is hypertechnical. Section 37-8-415 should be interpreted to mean the applicant's education has been approved and authorized by the state in which he has been licensed. Further, the Board's interpretation defeats the intention of the Legislature as expressed in 37-8-101(2). In re White, 220 M 36, 712 P2d 1344, 43 St. Rep. 151 (1986).

Attorney General's Opinions

Paramedical Specialist to Be Licensed to Practice Nursing: A paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act. If a paramedical specialist practices nursing without being licensed, he is subject to the penal provisions of this Act. 36 A.G. Op. 18 (1975).

37-8-405. Professional nursing — qualifications of applicants for license.

Compiler's Comments

2007 Amendment: Chapter 502 in introductory clause near end after "evidence" deleted "verified by oath"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1983 Amendment: In (3), after "board" deleted "acting under the professional nursing administration".

Attorney General's Opinions

Board of Nursing — No Authority to Require College Degree for Licensure: The Legislature did not intend to require nursing license applicants to hold a specific college degree, as is evidenced by the fact that the Legislature did not set forth this requirement in statute as it did for other license qualifications statutes, and by the fact it permits nursing educational programs to be located in educational institutions which could not confer the minimum proposed degrees. Therefore, the

Board of Nursing does not have authority to adopt a rule requiring a specific college degree as a qualification for licensure. 41 A.G. Op. 23 (1985).

37-8-406. License — professional nursing — examination.

Compiler's Comments

1981 Amendments: Chapter 248 completely rewrote the section (see 1981 Session Law). Former section read: "Professional nursing — examination — fee. An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of $35 at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or if the examination is not taken, subject to deduction by the department of $1 per subject of the examination which shall be retained by the department."

Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $35" near the beginning of the fourth sentence of the former section; and substituted "subject to deduction by the department of an amount prescribed by the board" for "subject to deduction by the department of $1" near the end of the last sentence of the former section.

Composite Section: The amendment by Ch. 345, L. 1981, substituting fee-setting authority in the board for statutory application fee amounts was not codified because Ch. 248, L. 1981, amended this section by deleting all reference to application fees.

Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. . . . Sections 10 and 14 grant rulemaking authority to the Board to establish passing scores for the professional and practical nurse examinations and establish requirements for rewriting the examination. It is the intent of the Legislature that the examination scores established be such as to insure the competency of applicants for licensure to protect the public health. Rules for rewriting the examination must provide assurance that the competency is as great as for applicants passing a first examination. . . ."

37-8-409. Advanced practice registered nursing — when professional nurse may practice.

Compiler's Comments

1995 Amendments — Coordination: Section 2, Ch. 422, amended this section, and sec. 3, Ch. 422, was a coordination instruction coordinating the amendment with House Bill No. 518 (Ch. 429, L. 1995). Because the coordination instruction overrides the amendment by sec. 2, the amendments made by sec. 3 are reported: in (1), in first sentence, substituted "this chapter" for "37-8-406 or 37-8-407", after "certificate in" substituted "a field of advanced practice registered nursing" for "nurse midwifery from the American college of nurse midwives", substituted "in the specified field of advanced practice registered nursing" for "midwifery", and at end of first sentence and in middle of second sentence substituted "in a field of advanced practice registered nursing" for "of nurse midwifery" and near middle of second sentence substituted "a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing" for "the American college of nurse midwives"; in (2), after "practice", substituted "in a specific field of advanced practice registered nursing" for "nurse midwifery for up to 4 months" and at end deleted "has taken the American college of nurse midwives"; inserted (2)(a) concerning intent to apply for approval; in (2)(b), at beginning, inserted "has completed the advanced practice registered nursing education required in order for the person to apply to take the first" and at end substituted "available from a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing" for "pending receipt of official notification of the results of the examination"; inserted (3) concerning failure of first examination; inserted (4) concerning adoption of rules for each field of advanced practice; and made minor changes in style. Amendment effective April 13, 1995.

Chapter 429 in (1) substituted "licensed under this chapter" for "licensed under 37-8-406 or 37-8-407"; deleted (2) that read: "(2) The board may give temporary approval to practice nurse-midwifery for up to 4 months to a person who has taken the American college of nurse-midwives national certification examination, pending receipt of official notification of the results of the examination"; and made minor changes in style.

1995 Statement of Intent: The statement of intent attached to Ch. 422, L. 1995, provided: "A statement of intent is required for this bill because it grants rulemaking authority to the board of nursing to give temporary approval and to establish requirements for temporary approval to practice in a field of advanced practice registered nursing. The legislature finds that it is in the public interest to give temporary approval to practice to a person who has completed the advanced practice registered nursing education required in order for the person to apply to take a national certification examination. In order to protect the public, the board of nursing is authorized to make rules regarding the procedures for obtaining temporary approval to practice in each field of advanced practice registered nursing and for the supervision of the nurse. Because the practices of nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists are unique, the board may adopt separate requirements for each specialty as necessary and shall consult with practitioners in each field in the development of the rules."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1981 Amendment: Deleted "—professional nursing administration" after "board" in (1) and at the beginning of (2).

Administrative Rules

Title 24, chapter 159, subchapter 14, ARM Advanced practice registered nurses.

Case Notes

Amendment to Board of Nursing Rule Not Redefining or Expanding Scope of Practice of Certified Registered Nurse Anesthetists — No MAPA Violation in Adoption of Rule: Plaintiffs asserted that the Board of Nursing improperly revised ARM 8.32.303 (renumbered ARM 24.159.1480) regarding the scope of practice of certified registered nurse anesthetists (CRNAs) and violated provisions of the Montana Administrative Procedure Act (MAPA) regarding an inadequate statement of reasonable necessity and improper notice. The Supreme Court disagreed. The notice for the rule in question stated that amendments would address the independent practice of CRNAs, but the actual amendment merely clarified existing CRNA practice and dealt with prescriptive authority. Nevertheless, even though the Board of Nursing did not fully comply with the requirement for a statement of necessity reflecting the proposed amendment, the Board substantially complied by putting the public on notice of the proposed amendment and permitting observation of and participation in the amendment process. Plaintiffs had notice of the proposed amendment and actively participated in the process by attending the public hearing and voicing their opposition to the amendment. Thus, the District Court did not err in holding that the amendments to ARM 8.32.303 did not redefine or expand the scope of practice of CRNAs or violate MAPA. Mont. Soc'y of Anesthesiologists v. Bd. of Nursing, 2007 MT 290, 339 M 472, 171 P3d 704 (2007).

37-8-410. Signature authority of advanced practice registered nurse.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

37-8-415. Licensed practical nursing — qualifications of applicants.

Compiler's Comments

2007 Amendment: Chapter 502 in introductory clause near end after "evidence" deleted "verified by oath"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1981 Amendment: Substituted "board" for "department" in the first sentence of the section; substituted language in (2) referring to practical nursing education program for "has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom"; deleted "acting under the practical nursing administration" after "board" in (3); added "in its rules" at the end of (3).

Administrative Rules

Title 24, chapter 159, subchapter 10, ARM Licensed practical nurses.

Case Notes

District Court Reversal of Board of Nursing Decision Upheld: White was refused licensing by endorsement under 37-8-417 (now repealed) by the Board of Nursing (Board) because although he was licensed as a practical nurse by New York State, he had not graduated from a practical nursing school. Instead, as is permitted in New York, he had taken the licensed practical nurse examination after completion of a substantial portion of a registered nursing program. The

Supreme Court affirmed the District Court's ruling that the Board must issue the license. The Board's interpretation of this section is hypertechnical. This section should be interpreted to mean the applicant's education has been approved and authorized by the state in which he has been licensed. Further, the Board's interpretation defeats the intention of the Legislature as expressed in 37-8-101(2). In re White, 220 M 36, 712 P2d 1344, 43 St. Rep. 151 (1986).

Attorney General's Opinions

Board of Nursing — No Authority to Require College Degree for Licensure: The Legislature did not intend to require nursing license applicants to hold a specific college degree, as is evidenced by the fact that the Legislature did not set forth this requirement in statute as it did for other license qualifications statutes, and by the fact it permits nursing educational programs to be located in educational institutions which could not confer the minimum proposed degrees. Therefore, the Board of Nursing does not have authority to adopt a rule requiring a specific college degree as a qualification for licensure. 41 A.G. Op. 23 (1985).

37-8-416. Licensed practical nursing — examination.

Compiler's Comments

1981 Amendment: Deleted "acting under the practical nursing administration" after "board" in the first sentence; inserted the third sentence referring to nationally standardized examination; inserted fourth sentence referring to the passing score; and substituted "board" for "department" in the last sentence.

Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. . . . Sections 10 and 14 grant rulemaking authority to the Board to establish passing scores for the professional and practical nurse examinations and establish requirements for rewriting the examination. It is the intent of the Legislature that the examination scores established be such as to insure the competency of applicants for licensure to protect the public health. Rules for rewriting the examination must provide assurance that the competency is as great as for applicants passing a first examination. . . ."

37-8-418. Licensed practical nursing — application fee.

Compiler's Comments

2005 Amendment: Chapter 126 near middle after "pay a" inserted "nonrefundable" and at end after "submitted" deleted "which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department"; and made minor changes in style. Amendment effective July 1, 2005.

1981 Amendment: Substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $35" near the beginning of the section; and substituted "subject to a deduction of an amount prescribed by the board" for "subject to a deduction of $5" near the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

37-8-421. Temporary practice permit.

Compiler's Comments

Effective Date: Section 4, Ch. 408, L. 2001, provided that this section is effective July 1, 2001.

37-8-422. Medication aide I — scope of practice.

Compiler's Comments

2011 Amendment: Chapter 392 in introductory clause after "aide" inserted "I". Amendment effective October 1, 2011.

Effective Date: This section is effective October 1, 2003.

Name Change: Pursuant to sec. 6, Ch. 448, L. 2003, an instructions to code commissioner section, the code commissioner in (2) substituted "assisted living facility" for "personal-care facility".

Administrative Rules

Title 24, chapter 159, subchapter 9, ARM Medication aides.

37-8-423. Medication aide II — qualifications.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 246, L. 2023. Amendment effective October 1, 2023.

Effective Date: This section is effective October 1, 2011.

37-8-424. Medication aide II — scope of practice.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

37-8-425. Medication aide — title.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

37-8-426. Medication aide II — implementation.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

37-8-432. Deposit of fees.

Compiler's Comments

1987 Amendment: Near beginning, after "chapter", inserted "except those collected by a justice's court".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-8-434. Criminal background check.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Part 5

Enhanced Nurse Licensure Compact

37-8-501. Enhanced nurse licensure compact — enactment.

Compiler's Comments

Effective Date: Section 4, Ch. 445, L. 2017, provided that this section is effective July 1, 2017.

CHAPTER 9

NURSING HOME ADMINISTRATORS

Chapter Administrative Rules

Title 24, chapter 162, ARM Board of Nursing Home Administrators.

Part 1

General

37-9-101. Definitions.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1995 Amendments: Chapter 418 in definition of long-term care facility substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 429 deleted definition of inactive nursing home administrator that read: ""Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration"; and made minor changes in style.

Chapter 546 in definition of long-term care facility substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 132, Ch. 429, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-9-102. Legislative findings — purpose.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 2

Board of Nursing Home Administrators

Part Administrative Rules

Title 24, chapter 162, subchapter 1, ARM Organizational rule.

Title 24, chapter 162, subchapter 2, ARM Procedural rules.

37-9-201. Organization and compensation of board.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted (2) which refers to compensation and travel expenses for "(2) As compensation for his services each member shall receive $25 a day, in addition to expenses, for each day of actual service in the performance of his duties. All members shall be allowed travel expenses as provided for in 2-18-501 through 2-18-503 and living expenses as may be approved by the board".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-9-202. Exclusive jurisdiction of board.

Administrative Rules

ARM 24.162.301 Definitions.

37-9-203. Duties of board.

Compiler's Comments

2009 Amendment: Chapter 109 in (1) near beginning after "order to" deleted "register and" and near middle before "training" inserted "education"; in (3) after "department to" deleted "register and" and after "individuals" deleted "after application of the techniques"; in (4) near middle after "individuals" deleted "registered and"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 429 deleted (6) and (7) that read: "(6) conduct or cause to be conducted one or more courses of instruction and training sufficient to meet the requirements of this chapter and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state; instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this chapter;

(7) prescribe or approve continuing education courses"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Part 3
Licensing

Part Administrative Rules

Title 24, chapter 162, subchapter 5, ARM Licensing.

37-9-301. Qualifications for licensure — examination.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 109 in (1) substituted "A person may not be granted a nursing home administrator license" for "The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator"; in (1)(a) substituted "good moral character as determined by the board" for "good character, of sound physical and mental health"; in (2) at end substituted "42 U.S.C. 1396g" for "Title XIX of the Social Security Act, Public Law 90-248, as amended"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1989 Amendment: In (1)(b)(ii), after "or experience", inserted "or a combination of education, training, and experience"; corrected internal reference; and made minor changes in phraseology and punctuation.

1989 Statement of Intent: The statement of intent attached to Ch. 464, L. 1989, provided: "A statement of intent is required for this bill to clarify the extension of existing authority to make rules on the subject of the provisions of this act.

It is the intent of this legislature that the board of nursing home administrators adopt rules governing the qualifications for licensure as a nursing home administrator, which qualifications are reasonably related to the performance of the functions normally carried out by those serving as nursing home administrators.

Any course of instruction, training, or education prescribed by the board should be related to the performance of the functions normally carried out by those employed as nursing home administrators and the protection of patients cared for in nursing homes.

It is also the intent of the legislature that the board not require a baccalaureate degree unless the federal government mandates such a degree for purposes of the state receiving federal financial participation for medicare.

The intent of the legislature is not to exclude qualified individuals because they do not meet an arbitrary standard that does not bear a strong relationship to expected job performance, but to exclude only those who are truly unqualified in the judgment of the board. The legislature intends that the written examination provided for in subsection (1)(c) of [the act] [37-9-301(1)(c)] provides additional protection to the public in screening out unqualified candidates."

Grandfather Clause — Education Requirements Waived for License Renewals: Section 2, Ch. 464, L. 1989, provided: "A person licensed as a nursing home administrator on [the effective date of this act] does not have to present evidence satisfactory to the board of sufficient education as required by 37-9-301(1)(b)(ii) in order to renew his license as a nursing home administrator." Effective October 1, 1989.

Federal Statute: The qualifications referred to in 37-9-301(2) are codified at 42 U.S.C. 1396g.

37-9-302. Department to license pursuant to board rules — nontransferability.

Compiler's Comments

2009 Amendment: Chapter 109 in (1) after "department shall" deleted "register and"; in (2) after "administrator's" deleted "registration and" and after "transferable" deleted "and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 429 deleted (3) that read: "(3) If the board determines that preliminary qualifications set forth in 37-9-301 will have been met before the next examination, it may authorize the department to issue a temporary permit for a period of 180 days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

37-9-304. Fees.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) after "licensure" deleted "whether by waiver, examination, or reciprocation"; in (2) deleted former second sentence that read: "A license expires on a date set by department rule and must be renewed upon timely payment of the license fee"; deleted former (3) that read: "(3) The fee for issuing a duplicate license must be fixed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 492 in (2), in second sentence after "A license expires", deleted "each year" and after "and must be" substituted "renewed" for "renewable annually". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted former (3) that read: "(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount fixed by the board. An inactive registration shall expire each year on a date established by rule of the department and shall be renewable annually upon timely payment of the inactive registration fee"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: In (2) and (3), after "shall expire" substituted "each year on a date set by rule of the department" for "on December 31 in the year for which it is issued"; and made minor changes in grammar and tense throughout.

1981 Amendment: Substituted "shall be required to pay a fee prescribed by the board" for "shall be required to pay a fee of $25" in (1); deleted ", not to exceed $100" after "an amount to be fixed by the board" at the end of the first sentence of (2); substituted "a registration fee in the amount fixed by the board" for "a registration fee in the amount of not more than $25" at the end of the first sentence of (3); and substituted "The fee for issuing a duplicate license shall be fixed by the board" for "The fee for issuing a duplicate license shall be $10" in (4).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.162.420 Fee schedule.

37-9-305. License — grounds for discipline.

Compiler's Comments

2009 Amendment: Chapter 109 near beginning after "granted" substituted "if the applicant meets the qualifications pursuant to 37-9-301 and, if the applicant holds another professional, temporary, or restricted license, there is no finding of unprofessional conduct" for "as a matter of course" and substituted second sentence regarding notice and hearing if a license applicant is denied for former second sentence that read: "However, if the board finds, after notice and hearing, that the applicant has acted or failed to act in accordance with this chapter, the board may find grounds for discipline". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2005 Amendment: Chapter 467 at beginning of first sentence substituted "A license" for "Each holder of a nursing home administrator's registration and license shall renew it by payment of the required fee for the next subsequent period prior to the expiration date of the currently valid registration and license, except as may be otherwise provided in 37-1-138. Renewals of registrations or licenses" and at end of second sentence after "act in" substituted "accordance with this chapter, the board may find grounds for discipline" for "a manner or under circumstances that would constitute grounds for discipline, it may not issue the renewal". Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 at end of first sentence inserted "except as may be otherwise provided in 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 492 in first sentence, after "shall renew it", deleted "annually" and after "the next subsequent" substituted "period" for "year"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 at end of second sentence, after "course", deleted "providing the holder has completed a continuing education course prescribed or approved by the board" and at end of third sentence, after "for", substituted "discipline" for "suspension or revocation of a registration and license"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: Changed renewal from prior to December 31 to prior to expiration date.

Administrative Rules

ARM 24.162.2301 Unprofessional conduct.

37-9-306. Deposit of fees.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

CHAPTER 10
OPTOMETRY

Chapter Administrative Rules

Title 24, chapter 168, ARM Board of Optometry.

Chapter Case Notes

Police Regulation: The practice of optometry is a proper subject for police regulation. Johnson v. Great Falls, 38 M 369, 99 P 1059 (1909).

Part 1
General

37-10-101. Definitions — practice of optometry.

Compiler's Comments

2001 Amendment: Chapter 483 in (4)(b) substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1999 Amendment: Chapter 34 in (1)(b) near beginning after "optometric means" deleted "excluding the use of surgery"; in (1)(c) at end after "anomalies" deleted "excluding surgery"; in (1)(e) near middle of first sentence before "drugs" deleted "topical" and in second sentence after "Glaucoma may" deleted "not"; inserted (3) clarifying that the section does not allow an optometrist to perform surgery; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendments: Chapter 121 in (3)(a) substituted "optometry" for "optometrists"; and made minor changes in style.

Chapter 306 in first sentence of (1)(e), after "drugs", deleted "not including corticosteroids"; and made minor changes in style.

1987 Amendment: Inserted (1)(d) including in the practice of optometry the administration, dispensation, and prescription of named oral analgesics; inserted (1)(e) including in the practice of optometry the administration, dispensation, and prescription of Board-approved topical drugs, except for the treatment of glaucoma; and in (2) substituted "Nothing in subsection (1) prohibits an optometrist from removing from the eye or adnexa a foreign body that is not intraocular" for "Nothing in subsection (1) allows optometrists to treat diseases of the eye."

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (3)(b); changed internal references to the department and the board.

Administrative Rules

ARM 24.168.301 Definitions.

ARM 24.168.421 Postoperative care.

Attorney General's Opinions

Optometry — Who May Fit Contact Lenses: Only duly licensed medical practitioners, commissioned officers of the U.S. Armed Forces whose regular duty includes eye care and treatment, and duly licensed optometrists may prescribe and fit a contact lens or lenses or dispense an ophthalmic lens or lenses in this state. 28 A.G. Op. 46 (1959).

37-10-102. Exemptions.

Attorney General's Opinions

Optometry — Who May Fit Contact Lenses: Only duly licensed medical practitioners, commissioned officers of the U.S. Armed Forces whose regular duty includes eye care and treatment, and duly licensed optometrists may prescribe and fit a contact lens or lenses or dispense an ophthalmic lens or lenses in this state. 28 A.G. Op. 46 (1959).

37-10-103. Use of drugs not prohibited by pharmacy law.

Compiler's Comments

1987 Amendment: After "optometrist" deleted "for examination purposes".

Administrative Rules

ARM 24.168.911 Ocular therapeutic approved drugs.

Part 2
Board of Optometry

Part Administrative Rules

Title 24, chapter 168, subchapter 1, ARM Organizational rule.
Title 24, chapter 168, subchapter 2, ARM Procedural rules.

37-10-201. Organization — meetings.

Compiler's Comments

1993 Amendment: Chapter 121 in second sentence, after "place", inserted "within the state", after "president" deleted "on the fourth Monday of July", after "whenever" deleted "and wherever", and after "meeting" inserted "at a location within the state"; and made minor changes in style. Amendment effective March 18, 1993.

37-10-202. Rulemaking power — seal.

Compiler's Comments

2005 Amendment: Chapter 126 in (1) near middle after "applicants for" substituted "licensure" for "certificates of registration". Amendment effective July 1, 2005.

Administrative Rules

Title 24, chapter 168, ARM Board of Optometry.

37-10-203. Compensation of members — expenses — deposit of moneys.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: In (1) after "board" substituted language that refers to compensation and travel expenses for "may receive as compensation the sum of $25 and travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3
Licensing

37-10-301. License required for practice — unlawful acts — injunction.

Compiler's Comments

2005 Amendment: Chapter 126 throughout section in 11 places substituted "license" for "certificate of registration"; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendment: Chapter 121 in (1)(g), after "application", deleted "for an examination by the department"; and made minor changes in style.

1981 Amendments: Chapter 66 deleted "and filed it or a certified copy with the county clerk and recorder of the county of his residence" from (1)(a).

Chapter 543 inserted (1)(i)(ii) which allows optical mechanic to do merely mechanical work on lens prescribed and dispensed by an optometrist; deleted subsection relating to advertising at a price or stated terms of a price or as being free, examination or treatment of the eyes, furnishing of optometrical services, or furnishing lenses; and inserted "measure, fit, or" in (1)(k).

Legislative Audit Committee Bill: Chapter 543, L. 1981 (SB 426), was introduced at the request of the Legislative Audit Committee. See State of Montana Report to the Legislature, Sunset Review Board of Optometrists, 79SS-5, Legislative Auditor, 1980.

County Registration — Preamble: The preamble to SB 307 (Ch. 66, L. 1981) provided: "WHEREAS, during the course of its sunset audits the legislative audit committee noted that licensees of several professions are required to register their licenses with the county clerk and recorder; and

WHEREAS, all such licensees are licensed by the state and county registration serves no public purpose.

THEREFORE, it is the intent of this bill to delete county registration requirements for members of various professions."

Administrative Rules

ARM 24.168.2301 Unprofessional conduct.

Attorney General's Opinions

Optometry — Who May Fit Contact Lenses: Only duly licensed medical practitioners, commissioned officers of the U.S. Armed Forces whose regular duty includes eye care and treatment, and duly licensed optometrists may prescribe and fit a contact lens or lenses or dispense an ophthalmic lens or lenses in this state. 28 A.G. Op. 46 (1959).

37-10-302. Qualifications — application.

Compiler's Comments

2009 Amendment: Chapter 109 in (3) at end substituted "association of regulatory boards of optometry" for "international association of boards of examiners in optometry". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2007 Amendment: Chapter 502 in (2) before "of good" deleted "18 years of age or older and"; in (3) near middle after "accredited" deleted "high school and from a"; and in (4) at beginning substituted "An applicant for" for "A person desiring". Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendments — Composite Section: Chapter 126 in (1) near end of first sentence after "applicants for" substituted "licensure" for "certificates of registration" and near end of fifth sentence after "requirements for a" substituted "license" for "certificate" (amendment in fifth sentence rendered void by Ch. 467 amendment); in (2) after "receive a" substituted "license" for "certificate of registration"; in (3) near beginning after "receive a" substituted "license" for "certificate of registration", after "person has" substituted "graduated" for "certificates of graduation", and near middle after "study" deleted "covering 8 semesters or 4 years of actual attendance and"; in (4) near beginning after "desiring a" substituted "license" for "certificate of registration"; and in (5) near end after "receive a" substituted "license" for "certificate of registration" (amendment in (5) rendered void by Ch. 467 amendment). Amendment effective July 1, 2005.

Chapter 467 in (1) deleted former second through sixth sentences that read: "If the applicant does not meet the requirements of the rules, the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations must be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and must be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry"; in (4) after "file" substituted "a completed application on a form provided by the department" for "an application, in the manner prescribed by the board"; deleted former (5) that read: "(5) A person who successfully passes the examination administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must be registered in a register kept by the department and, on the payment of a fee prescribed by the board, must receive a certificate of registration signed by the members of the board"; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendment: Chapter 121 in (1), in third sentence before "department", inserted "national board of examiners in optometry on behalf of the"; in (2) and at beginning of (3), after "eligible to", substituted "receive a certificate of registration" for "take the examination"; deleted former second sentence of (3) that read: "Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states"; in (4), near beginning after "desiring", substituted "a certificate of registration" for "to be examined in optometry" and near middle, after "board", substituted "pay a fee prescribed by the board" for "at least 4 weeks before the examination is held, and a fee prescribed by the board shall accompany the application"; in (5), near beginning after "examination", inserted "administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist"; and made minor changes in style. Amendment effective March 18, 1993.

1981 Amendments: Chapter 341 deleted "a citizen of the United States" and inserted "or older" after "18 years of age" in (2).

Chapter 345 substituted "and a fee prescribed by the board" for "and a fee of $25" near the end of (4); and substituted "the payment of a fee prescribed by the board" for "the payment of a fee of $10" in the middle of (5).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Citizenship Qualifications — Preamble: The preamble to SB 412 (Ch. 341, L. 1981), provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Administrative Rules

ARM 24.168.401 Fee schedule.

ARM 24.168.402 Licensure requirements.

37-10-304. Course in use of diagnostic and therapeutic drugs required.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 126 in (1)(a) near middle after "course" deleted "prescribed by the board of medical examiners with consultation and approval by the board of optometrists"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 130 in (1)(a) near middle after "board of" substituted "optometry" for "optometrists" (amendment in (1)(a) rendered void by Ch. 126 amendment); and made minor changes in style. Amendment effective October 1, 2005.

Chapter 467 in (1)(c) deleted former second sentence that read: "The course must also be approved by the board"; deleted former (1)(d) that read: "(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass the examination"; in (2)(a)(i) near beginning after "of the" substituted "association of regulatory boards" for "international association of boards of examiners"; in (2)(a)(ii) deleted former third sentence that read: "The course and examination must also be approved by the board"; deleted former (2)(c) that read: "(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes the examination"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 near beginning of (1), after "37-10-302", deleted "or 37-10-303, whichever is applicable"; at beginning of (2)(a) deleted "In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1987 Amendment: Redesignated former (1) through (4) as (1)(a) through (1)(d); inserted (2) providing requirements for applicants and licensees who desire to use therapeutic drugs in the practice of optometry; and corrected internal references.

Administrative Rules
Title 24, chapter 168, subchapter 9, ARM Therapeutic pharmaceutical agents.
Title 24, chapter 168, subchapter 21, ARM Continuing education and renewals.

Attorney General's Opinions
Board: The word "board" as used in this section means the Board of Medical Examiners. 37 A.G. Op. 99 (1977).

37-10-306. License to be displayed in office.

Compiler's Comments
2005 Amendment: Chapter 126 near beginning after "whom a" substituted "license" for "certificate of examination or registration"; and made minor changes in style. Amendment effective July 1, 2005.

CHAPTER 11
PHYSICAL THERAPY

Chapter Administrative Rules
Title 24, chapter 177, ARM Board of Physical Therapy Examiners.

Part 1
General

37-11-101. Definitions.

Compiler's Comments
2021 Amendments — Composite Section: Chapter 242 in definition of physical therapy substituted "telehealth" for "telemedicine"; substituted telehealth for telemedicine as defined term; and made minor changes in style. Amendment effective January 1, 2022.

Chapter 497 substituted telehealth for telemedicine as defined term and in definition of telehealth substituted reference to 37-2-305 for reference to 33-22-138. Amendment effective October 1, 2021.

2017 Amendment: Chapter 257 in definition of physical therapy near beginning inserted "in person or through telemedicine"; inserted definition of telemedicine; and made minor changes in style. Amendment effective October 1, 2017.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 253 in definition of physical therapist assistant, in (a) after "accredited", inserted "physical therapist assistant", in (b), after "therapy", inserted "but who may not make evaluations or design treatment plans" and at end deleted "whose activities require an understanding of physical therapy", and inserted (c) concerning supervision by licensed physical therapist; inserted definition of physical therapist assistant student; in definition of physical therapy aide, at end, substituted "or a licensed physical therapist assistant as described in 37-11-105" for "who must be available for periodic checks during any procedure or treatment involving a patient"; in definition of physical therapy student, at end, substituted "and who is supervised by a licensed physical therapist as described in 37-11-105" for "under the direction, guidance, and observation of a licensed physical therapist"; and made minor changes in style.

1991 Amendment: In definition of physical therapy, near middle, inserted "prescribed topical medications"; inserted definition of topical medications; and made minor change in style.

1991 Statement of Intent: The statement of intent attached to Ch. 237, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [37-11-107] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

(1) be adopted after consultation with the board of medical examiners and the board of pharmacy;

(2) be in the form of written protocols that include:

(a) a description of the topical medication;

(b) a description of its actions, indications, and contraindications; and

(c) the proper procedure and technique for the application and administration of the medication; and

(3) apply only to topical medications for which a prescription is required under state or federal law."

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (8); changed internal references to the department and the board.

Administrative Rules

ARM 24.177.405 Licensure exemptions, supervision, and delegation.

Attorney General's Opinions

Occupational Therapist Not Authorized to Use Iontophoresis: Iontophoresis is a process that uses electricity to administer topical medication. The statutes governing the practice of physical therapy define topical medication and iontophoresis and authorize its use by physical therapists, but the statutes governing the practice of occupational therapy do not contain those definitions or authorize the use of topical medications, including medications administered through iontophoresis, by occupational therapists. If the Legislature had intended to authorize occupational therapists to use iontophoresis, it would have made an authorization corollary to the statutes governing physical therapists, but it did not. Therefore, occupational therapists are not authorized by Montana law to perform iontophoresis. 49 A.G. Op. 1 (2001).

Examination and Diagnosis of Physical Handicaps by Physical Therapists: A physical therapist (prior to 1981 amendment of 37-11-104) may not act as a consultant in evaluating and diagnosing physical handicaps of any person unless acting at the request and direction of a licensed physician. 38 A.G. Op. 9 (1979).

37-11-102. Exemptions.

Compiler's Comments

1991 Amendment: At end substituted "to the extent they do massage" for "masseurs, or Swedish masseurs"; and made minor changes in style.

1991 Statement of Intent: The statement of intent attached to Ch. 237, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [37-11-107] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

(1) be adopted after consultation with the board of medical examiners and the board of pharmacy;

(2) be in the form of written protocols that include:

(a) a description of the topical medication;

(b) a description of its actions, indications, and contraindications; and

(c) the proper procedure and technique for the application and administration of the medication; and

(3) apply only to topical medications for which a prescription is required under state or federal law."

Administrative Rules

ARM 24.177.405 Licensure exemptions, supervision, and delegation.

37-11-103. Restrictions on scope of practice.

Compiler's Comments

1997 Amendment: Chapter 481 in (1)(c) and (2)(c), after "written", inserted "or computerized".

37-11-104. Physical therapy — evaluation and treatment.

Compiler's Comments

1987 Amendment: In second clause of (1), after "the development", deleted "but not the implementation"; and in (3) inserted "and treatment" after "evaluation", inserted reference to subsection (2), and at end deleted "from physicians, osteopaths, dentists, or podiatrists, but treatment may be rendered only to patients referred by physicians, osteopaths, dentists, or podiatrists".

1981 Amendment: Substituted "Physical therapy evaluation includes" for "Physical therapy is practiced under referral from physicians, osteopaths, dentists, and podiatrists and includes" at the beginning of (1); substituted "development, but not the implementation, of a plan" for "establishment and modification" in the middle of (1); added subsection (3) allowing licensed physical therapist to perform evaluation and treatment procedures without referral; and made minor changes in punctuation.

Attorney General's Opinions

Occupational Therapist Not Authorized to Use Iontophoresis: Iontophoresis is a process that uses electricity to administer topical medication. The statutes governing the practice of physical therapy define topical medication and iontophoresis and authorize its use by physical therapists, but the statutes governing the practice of occupational therapy do not contain those definitions or authorize the use of topical medications, including medications administered through iontophoresis, by occupational therapists. If the Legislature had intended to authorize occupational therapists to use iontophoresis, it would have made an authorization corollary to the statutes governing physical therapists, but it did not. Therefore, occupational therapists are not authorized by Montana law to perform iontophoresis. 49 A.G. Op. 1 (2001).

37-11-105. Supervision of physical therapist assistant, physical therapy aide, physical therapy student, or physical therapist assistant student.

Compiler's Comments

2021 Amendments — Composite Section: Chapters 242 and 497 in (1) in second sentence after "a visit by means of" substituted "telehealth" for "telemedicine". Chapter 242 amendment effective January 1, 2022. Chapter 497 amendment effective October 1, 2021.

2019 Amendment: Chapter 193 in (1) in second sentence near middle inserted "or a visit by means of telemedicine". Amendment effective October 1, 2019.

1995 Amendment: Chapter 253 in (1), in first sentence before "supervision", deleted "direct" and inserted second sentence concerning onsite visits to client; inserted (2) limiting supervision to two full-time assistants; inserted (3) concerning onsite supervision and limiting number of aides supervised; inserted (4) concerning onsite supervision for students; and made minor changes in style.

Administrative Rules

ARM 24.177.405 Licensure exemptions, supervision, and delegation.

37-11-106. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements.

Compiler's Comments

2005 Amendment: Chapter 126 in (3) at end of first sentence after "medications" deleted "and must be purchased from a pharmacy certified under 37-7-321" and in second sentence after "comply with" inserted "United States food and drug administration" and at end after "guidelines" deleted "developed by the board of pharmacists under Title 37, chapter 7". Amendment effective July 1, 2005.

1991 Statement of Intent: The statement of intent attached to Ch. 237, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [37-11-107] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

(1) be adopted after consultation with the board of medical examiners and the board of pharmacy;

(2) be in the form of written protocols that include:

(a) a description of the topical medication;

(b) a description of its actions, indications, and contraindications; and

(c) the proper procedure and technique for the application and administration of the medication; and

(3) apply only to topical medications for which a prescription is required under state or federal law."

Attorney General's Opinions

Occupational Therapist Not Authorized to Use Iontophoresis: Iontophoresis is a process that uses electricity to administer topical medication. The statutes governing the practice of physical therapy define topical medication and iontophoresis and authorize its use by physical therapists, but the statutes governing the practice of occupational therapy do not contain those definitions or authorize the use of topical medications, including medications administered through iontophoresis, by occupational therapists. If the Legislature had intended to authorize occupational therapists to use iontophoresis, it would have made an authorization corollary to the statutes governing physical therapists, but it did not. Therefore, occupational therapists are not authorized by Montana law to perform iontophoresis. 49 A.G. Op. 1 (2001).

37-11-107. Board adoption of protocols.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 237, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [37-11-107] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

(1) be adopted after consultation with the board of medical examiners and the board of pharmacy;

(2) be in the form of written protocols that include:

(a) a description of the topical medication;

(b) a description of its actions, indications, and contraindications; and

(c) the proper procedure and technique for the application and administration of the medication; and

(3) apply only to topical medications for which a prescription is required under state or federal law."

Part 2
Duties of Board and Department

Part Administrative Rules

Title 24, chapter 177, subchapter 1, ARM Organizational rule.

Title 24, chapter 177, subchapter 2, ARM Procedural rules.

37-11-201. General powers — rulemaking.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1)(b) that read: "(b) grant, suspend, and revoke licenses"; deleted former (2) through (5) that read: "(2) The board shall:

(a) examine applicants for licenses at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure;

(c) conduct written or computerized examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate; and

(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants, subject to the provisions of 37-1-138.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every licensed physical therapist and licensed assistant, the therapist's or assistant's last-known place of business and last-known place of residence, and the date of issue and the number of every license and certificate issued to a licensed physical therapist or licensed assistant.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 in (2)(d) at end inserted "subject to the provisions of 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 481 in (2)(a), after "licenses", deleted "three times a year"; and in (2)(c), after "written", inserted "or computerized".

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician;

the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30."

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment: Chapter 253 inserted (2)(d) concerning rules for continuing education; in (3), in second sentence in three places, inserted references to assistants; and made minor changes in style.

1995 Statement of Intent: The statement of intent attached to Ch. 253, L. 1995, provided: "A statement of intent is required for this bill because it grants the board of physical therapy examiners rulemaking authority to establish continuing education requirements for a physical therapist and a physical therapy assistant to obtain a license renewal. In adopting rules, the board should conform to continuing education standards for similar professions."

1991 Amendment: In (2)(a) increased from two to three the number of times a year the examination must be offered; and made minor change in style. Amendment effective March 20, 1991.

1979 Statement of Intent: The statement of intent adopted with HB 571 (Ch. 491, L. 1979) provided: "House Bill 571 creates a Board of Physical Therapists. The board would be allowed rulemaking authority.

It is the intent of the legislature that any rules adopted by the board be limited to:

1. establishing minimum state requirements and educational standards for those persons practicing physical therapy in Montana;
2. assuring physicians practicing in any branch of medicine, hospitals, and employing agencies that the persons practicing physical therapy are qualified; and
3. protecting persons needing physical therapy from fraudulent physical therapists by establishing licensing requirements which ensure that only competent physical therapists practice in Montana."

Administrative Rules

Title 24, chapter 177, ARM Board of Physical Therapy Examiners.

37-11-203. Travel expense — deposit of fees.

Compiler's Comments

1995 Amendment: Chapter 253 deleted (3) that read: "(3) The board of medical examiners shall transfer funds in the state special revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the state special revenue account designated as the "physical therapist account""; and made minor changes in style.

1983 Amendment: Substituted references to state special revenue account for references to earmarked revenue account.

1981 Amendment: In (1) after "shall" substituted language providing that Board members receive compensation and travel expenses as provided in 37-1-133 for "be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3
Licensing

37-11-301. License required for physical therapist and physical therapist assistant — unauthorized representation as licensed therapist.

Compiler's Comments

2021 Amendment: Chapter 57 in (2) in three places after references to physical therapist inserted references to physical therapist assistant and after "Registered Physical Therapist" inserted ""D.P.T.", "Doctor of Physical Therapy", "P.T.A.", "Physical Therapist Assistant", "L.P.T.A.", "Licensed Physical Therapist Assistant", "R.P.T.A.", "Registered Physical Therapist Assistant""; and made minor changes in style. Amendment effective March 8, 2021.

1995 Amendment: Chapter 253 inserted (1) requiring licensure as condition of practice; inserted (3) requiring licensure for assisting physical therapist; and made minor changes in style.

Saving Clause: Section 19, Ch. 491, L. 1979, provided: "A license to practice physical therapy issued prior to the effective date of this act remains in effect for the period of its validity but upon expiration may be renewed only in accordance with this act."

Case Notes

Failure to Provide Notice of Child Abuse Substantiation Hearing Not Affecting Employment as Physical Therapy Assistant — No Prejudice to Substantial Rights: When Dowell applied to work at a day-care center, the Department of Public Health and Human Services (DPHHS) denied the request, without a substantiation hearing, based on Dowell's previous child abuse and neglect proceedings. The District Court affirmed. On appeal, Dowell contended that the DPHHS's failure to provide her with timely notice prejudiced her constitutional right to subsequent employment as a physical therapy assistant. Under 2-4-704, judicial review of an agency decision must be confined to the record that was brought before the agency. Implications on licensure as a physical therapist are determined by the Board of Physical Therapists, not the DPHHS, and Dowell provided no evidence that the substantiation determination by the DPHHS impacted employment as a physical therapist, so Dowell's substantial rights were not affected. The District Court was affirmed. Dowell v. Dept. of Public Health and Human Services, 2006 MT 55, 331 M 305, 132 P3d 520 (2006).

37-11-303. Qualifications of applicants for license.

Compiler's Comments

2021 Amendment: Chapter 57 in (1)(c) after "board" deleted "and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist". Amendment effective March 8, 2021.

1997 Amendment: Chapter 481 in (1)(c) and (2)(c), after "written", inserted "or computerized".

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30."

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 253 inserted (2) establishing qualifications for physical therapist assistant; and made minor changes in style.

Chapter 429 at beginning of (1)(c) deleted "either"; deleted (3)(b) that read: "(b) be entitled to a license without examination under 37-11-307"; and made minor changes in style.

The Code Commissioner has reflected the reoutlining contained in Ch. 253.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1981 Amendment: In (3)(a) substituted language referring to written and oral examination requirements for "pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist".

Administrative Rules

ARM 24.177.501 Examinations.

Attorney General's Opinions

Examination and Diagnosis of Physical Handicaps by Physical Therapists: A physical therapist may not act as a consultant in evaluating and diagnosing physical handicaps of any person unless acting at the request and direction of a licensed physician. 38 A.G. Op. 9 (1979). (See 1981 amendment to 37-11-104.)

37-11-304. Application for examination.

Compiler's Comments

2021 Amendment: Chapter 57 deleted former last sentence that read: "The person shall provide evidence, satisfactory to the board, of having the qualifications preliminary to the examination required by 37-11-303." Amendment effective March 8, 2021.

2005 Amendment: Chapter 467 in first sentence after first "department" deleted "in writing" and in second sentence after "evidence" deleted "under oath"; deleted former (1)(b) and (2) that read: "(b) pay to the department at the time of filing the application a fee established by the board by rule. The fee must be commensurate with the cost of the examination and its administration and must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Anyone failing to pass the required examination on the first attempt is entitled to take a second examination and, if the second examination is failed, to take a third examination. A person who fails the third examination is required to successfully complete additional education as required by the board before retaking the examination"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendments — Composite Section: Chapter 253 in (1), after "therapist", inserted "or a physical therapist assistant"; in (2) inserted second sentence concerning additional education if third examination is failed; and made minor changes in style.

Chapter 429 at beginning of (1) deleted "Unless entitled to a license under 37-11-307"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (2), after "required examination", inserted "on his first attempt" and after "second examination" substituted "and, if he fails the second examination, to sit for a third examination" for "within 6 months"; and made minor changes in style. Amendment effective March 20, 1991.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 24.177.401 Fees.

37-11-306. Issuance of license — certificate as evidence.

Compiler's Comments

1995 Amendment: Chapter 253 in first sentence, near beginning after "shall", substituted "issue a license to" for "license as a physical therapist" and near end, before "license", inserted "physical therapist or physical therapist assistant"; in second sentence, near middle, substituted "right to practice and advertise" for "right of the person to whom it is issued to represent himself" and after "therapist" inserted "or a physical therapist assistant"; and made minor changes in style.

37-11-307. Applicants licensed in other states.

Compiler's Comments

2017 Amendment: Chapter 36 inserted (1) regarding the board being subject to the physical therapy compact; in (2) in first sentence near end after "another state or territory" inserted "that is not part of the compact" and in second sentence near beginning after "another state or territory" inserted "that is not part of the compact, if licensed"; and made minor changes in style. Amendment effective October 1, 2017.

1995 Amendment: Chapter 253 in two places in first sentence and in second sentence inserted reference to physical therapist assistant; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1983 Amendment: In first sentence, substituted "if the applicant has met the same requirements as applicants licensed by examination under this chapter" for "if the requirements for a license for physical therapists in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state"; inserted second sentence allowing under certain conditions licensure of applicant licensed elsewhere by an examination other than that recognized by this state; and at end of section inserted "and may require continued study or refresher courses".

1981 Amendment: Deleted ", not to exceed $100," after "on the payment of the required fee" near the beginning of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.177.507 Licensure of out-of-state applicants.

37-11-310. Foreign-trained applicants.

Compiler's Comments

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text that read: "The foreign-trained physical therapist applicant's transcripts will be evaluated by the board. The board will compare the applicant's transcript to the standards set by the American physical therapy association. If the applicant's professional education credit hours are approved by the board and the school the applicant attended was approved by the American physical therapy association at the time the applicant attended, the applicant is eligible for a temporary license prior to examination."

Administrative Rules

ARM 24.177.510 Foreign-trained applicants.

37-11-311. Display of license.

Compiler's Comments

2021 Amendment: Chapter 57 in middle substituted "current license" for "original license or an official duplicate issued by the department and a renewal certificate"; and deleted former last sentence that read: "A reproduction displayed in lieu of the original or official duplicate is not authorized unless the reproduction is signed and notarized by a notary public." Amendment effective March 8, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-11-312. Criminal record background check.

Compiler's Comments

2019 Amendment: Chapter 287 in (1) substituted current text for former text that read: "As provided in 37-1-307, the board is authorized to require each applicant for licensure to submit a full set of the applicant's fingerprints to the board for the purpose of obtaining a state and federal criminal history background check"; deleted former (2) that read: "(2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state and federal criminal history background check"; in (2) substituted "obtaining a criminal record background check by the Montana department of justice and the federal bureau of investigation" for "obtaining a state and federal criminal history background check.

(4) The Montana department of justice may share the fingerprint data gathered under this section with the federal bureau of investigation"; and made minor changes in style. Amendment effective May 3, 2019.

Effective Date: This section is effective October 1, 2017.

37-11-316. Physical therapy licensure compact enactment — provisions.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

37-11-320. Duty to report violations — immunity from liability.

Compiler's Comments

1995 Amendment: Chapter 253 in four places inserted reference to physical therapist assistant; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

37-11-321. Refusal to issue or renew license.

Compiler's Comments

1997 Amendment: Chapter 490 in (7), at beginning after "has been", substituted "committed pursuant to 53-21-127" for "declared to be seriously mentally ill", near middle, after "released from", substituted "commitment" for "treatment", and at end substituted "require further commitment" for "be seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 253 in (5), (9), and (10) inserted reference to assistant; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

CHAPTER 12
CHIROPRACTIC

Chapter Administrative Rules

Title 24, chapter 126, ARM Board of Chiropractors.

Part 1
General

37-12-101. Definitions — practice of chiropractic.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1)(b); changed internal references to the department and the board.

Case Notes

Statute Not Unconstitutionally Vague: The definition of practice of chiropractic in this section is not unconstitutionally vague in violation of the Due Process Clause. The term "specific adjustment or manipulation" is a scientific term having a readily ascertainable definition within the chiropractic community and provides a standard with meaningful differentiation between culpable and innocent conduct. Defendant, as a chiropractor licensed in two states, cannot assert lack of notice of the meaning of the terms. St. v. Blinzler, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

37-12-102. Exemptions — limitations on construction of chapter.

Compiler's Comments

2003 Amendment: Chapter 224 in middle of third sentence after "provisions of" substituted "this title pertaining to the practice of osteopathy" for "chapter 5 of this title"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

37-12-104. Rights and limitations governing practice.

Compiler's Comments

1989 Amendment: In (1) substituted "medical doctors, osteopaths" for "regular physicians".

Severability: Section 6, Ch. 203, L. 1989, was a severability clause.

Administrative Rules

ARM 24.126.301 Definitions.

Case Notes

Chiropractor Barred From Testifying as to Impairment Rating: Public policy suggests that only qualified physicians, but not chiropractors, should be allowed to render opinions on impairment ratings based on the American Medical Association's Guides to Evaluation of Permanent Impairment. Restricting use of the guides in this way ensures reliable, authoritative opinions on which juries can depend in making their determinations. Wacker v. Park Rural Elec. Co-op, Inc., 239 M 500, 783 P2d 360, 46 St. Rep. 1864 (1989).

Part 2
Board of Chiropractors

Part Administrative Rules

Title 24, chapter 126, subchapter 1, ARM Organizational rule.
Title 24, chapter 126, subchapter 2, ARM Procedural rules.

37-12-201. Organization of board — powers and duties.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (2) that read: "(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates"; deleted former (3)(b) that read: "(b) adopt a seal that must be affixed to licenses issued"; in (4) in second sentence after "applications" substituted "the display of licenses" for "form and display of license, license examination format, criteria for and grading of examinations, disciplinary standards for licensees"; deleted former (3)(f) through (3)(h) that read: "(f) administer the examination for licensure under this chapter;

(g) establish and collect fees, fines, and charges as provided in this chapter;

(h) issue, suspend, or revoke licenses under the conditions prescribed in this chapter"; deleted former (4) that read: "(4) The department shall keep a record of the proceedings of the board, which must at all times be open to public inspection"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 in (2) deleted last sentence that read: "A majority of the board constitutes a quorum." Amendment effective October 1, 2001.

1995 Amendment: Chapter 429 deleted (3)(e) that required Board to investigate complaints; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 275 in (3)(d), at end, inserted "and the registration of interns and preceptors"; and made minor changes in style. Amendment effective April 7, 1993.

1989 Amendments: Chapter 161 inserted (3)(j) relating to certification of a chiropractor as a qualified evaluator; and made minor changes in punctuation.

Chapter 203 in (3)(h) substituted "establish and collect fees, fines, and charges as provided" for "collect fees and charges prescribed".

1989 Statement of Intent: The statement of intent attached to Ch. 161, L. 1989, provided: "This bill authorizes the board of chiropractors to adopt a rule for the certification of impairment evaluators within their profession. The board should consider the applicant's experience in treating industrial accidents and any academic training he may have in using the impairment rating guides recognized by the division of workers' compensation."

Severability: Section 6, Ch. 203, L. 1989, was a severability clause.

1987 Amendment: In (2) deleted former second sentence that read: "Not more than four meetings may be held in any one year"; made (3)(a) mandatory rather than permissive; in (3)(b), after "issued", deleted "and shall make rules necessary for the performance of its duties"; inserted (3)(d) through (3)(i) directing Board to adopt rules and to otherwise regulate the licensure of chiropractors; and made minor changes in phraseology.

Administrative Rules

Title 24, chapter 126, ARM Board of Chiropractors.

37-12-202. Compensation of members — expenses.

Compiler's Comments

1981 Amendment: Substituted language after "receive" for "$25 for each day during which they are actually engaged in the discharge of their duties plus mileage and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3
Licensing

Part Administrative Rules

Title 24, chapter 126, subchapter 5, ARM Licensing and scope of practice.

37-12-301. Unlawful to practice without license.

Case Notes

Failure of Licensing Board to Overcome Presumption That License Renewal Timely Mailed and Received: Dr. Baldwin's chiropractor license renewal was due September 1, and the renewal packet was mailed to the Board of Chiropractors on August 17, but the Board never received it. After seeing two patients on September 2, the doctor called the Board to inquire whether the license had been reissued. The doctor was instructed to stop seeing patients because the license had not been renewed. The doctor was subsequently found to have engaged in unprofessional conduct for practicing without a license and placed on probation for 1 year, and a private letter of reprimand was placed in the doctor's license file. The doctor appealed the decision, but the District Court denied the request to reverse the decision. On appeal, the Supreme Court reversed. The Board did not dispute that the packet was mailed on August 17, but simply asserted that the packet was not received without offering any additional evidence of nonreceipt. Absent additional evidence, the Board failed to overcome the rebuttable presumption in 26-1-602(24) that a letter duly directed and mailed was received in the regular course of the mail. The District Court erred in affirming the Board's decision that the doctor failed to renew the license on time and practiced without a license. Baldwin v. Bd. of Chiropractors, 2003 MT 306, 318 M 188, 79 P3d 810 (2003).

State of Mind Required for Conviction: Although no particular mental state is identified in this section, 45-2-103 clearly requires the practice of chiropractic be done knowingly or purposely to constitute an offense. St. v. Blinzler, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

Statute Not Unconstitutionally Vague: The definition of practice of chiropractic in 37-12-101 is not unconstitutionally vague in violation of the Due Process Clause. The term "specific adjustment or manipulation" is a scientific term having a readily ascertainable definition within the chiropractic community and provides a standard with meaningful differentiation between culpable and innocent conduct. Defendant, as a chiropractor licensed in two states, cannot assert lack of notice of the meaning of the terms. St. v. Blinzler, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

Sufficiency of Evidence to Prove Practice of Chiropractic: Evidence that defendant had placed his knee on a patient's rib and then pulled her arms back and had placed another patient lying on his stomach and then pushed down on his back, combined with the testimony of two licensed chiropractors who identified those procedures as specific adjustments, provided substantial evidence from which the jury could find the defendant guilty of practicing chiropractic without a license. St. v. Blinzler, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

37-12-302. Applications — qualifications — fees.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) in first sentence after "department on" substituted "a department form" for "the form and in the manner prescribed by the board", in second sentence after "graduate of" deleted "or expect to graduate within 90 days prior to the next licensing examination administered by the board from" and after "board" deleted "in which the applicant has attended a course of study of 4 school years of not less than 9 months each", and deleted former fourth sentence that read: "Application must be made in writing, must be sworn to by an officer authorized to administer oaths, and must recite the history of applicant's educational qualifications, how long the applicant has studied chiropractic, of what school or college the applicant is a graduate, and the length of time the applicant has been engaged in practice"; in (2) deleted former second sentence that read: "A fee must also be paid for a subsequent examination and application"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 at end of first sentence after "board" deleted "at least 21 days prior to a meeting of the board"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1995 Amendment: Chapter 168 in (1), in third sentence in middle, increased education requirement from 2 years of college or university work at an institution acceptable to the Board of Regents to a bachelor's degree from an accredited college or university; inserted (3) exempting persons licensed before October 1, 1995, from the bachelor's degree requirement; and made minor changes in style.

1989 Amendment: In second sentence of (1) inserted "or expect to graduate within 90 days prior to the next licensing examination administered by the board from".

Severability: Section 6, Ch. 203, L. 1989, was a severability clause.

1981 Amendment: Substituted "a license fee prescribed by the board" for "a license fee of $50" at the end of the first sentence of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.126.701 Inactive status and conversion to active status.

ARM 24.126.2103 Continuing education requirements.

Case Notes

Admission to Examination: The Board of Chiropractors (formerly Board of Chiropractic Examiners) was compelled to allow graduates of certain chiropractic school to take examination for license where graduates of the school had previously been admitted to practice and where Board refused to inspect school. State ex rel. Westercamp v. St. Bd. of Chiropractic Examiners, 137 M 451, 352 P2d 995 (1960).

Attorney General's Opinions

Applicants for Licensure — Training Requirements: Applicants for licensure by examination to the practice of chiropractic in this state must have the academic and professional training as established by this section. 29 A.G. Op. 12 (1961).

Licensure by Reciprocity — Educational Standards: Applicants for licensure by reciprocity need not have the educational requirements established by this section if they have practiced in and have been licensed by a state that has educational admission standards equal to this state's standards. 29 A.G. Op. 12 (1961). (Opinion issued prior to repeal of reciprocity statute.)

37-12-304. Examinations — subjects.

Compiler's Comments

2003 Amendment: Chapter 224 substituted language in (1) requiring license applicants to have passed board-prescribed examination for former (1) that read: "(1) Examinations for a license to practice chiropractic must be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application must be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded"; deleted former (2) that read: "(2) Examinations must be administered on subjects taught in chiropractic colleges, on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic. A license must be granted to applicants who correctly answer 75% of all questions asked, including x-ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, the applicant is not entitled to a license"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1993 Amendment: Chapter 275 in (2), near beginning, substituted "administered" for "made in writing" and after "colleges" substituted "on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic" for "including the use of x-ray equipment and radiographs. Additional subjects may be prescribed by the board to meet new conditions"; and made minor changes in style. Amendment effective April 7, 1993.

1983 Amendment: In (2), in first sentence changed the examination subjects from "anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation" to "subjects taught in chiropractic colleges, including the use of x-ray equipment and radiographs" and at end of second sentence inserted "including x-ray questions"; and in (3) changed the examination requirement, which formerly provided that applicant "satisfactorily passes a clinical proficiency examination before the department, subject to 37-1-101".

Administrative Rules

ARM 24.126.504 Examination requirements.
ARM 24.126.704 Interns and preceptors.

37-12-308. Deposit of fees — accounting.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-12-309. Municipal license fee prohibited.

Compiler's Comments

1987 Amendment: At end of section inserted "including a local government with self-governing powers".

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-12-322. Investigation of complaints.

Compiler's Comments

1997 Amendment: Chapter 490 in (1)(b), after "incompetent or", substituted "has been committed pursuant to 53-21-127" for "seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 429 at beginning of (1) substituted "department" for "board"; in (2), in first sentence after "may", inserted "upon order of the board" and deleted third and fourth sentences that read: "If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice"; deleted (3) through (7) that read: "(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;
(b) suspend the licensee's right to practice for a period not to exceed 1 year;
(c) suspend its judgment of revocation on terms and conditions determined by the board;
(d) place the licensee on probation;
(e) fine the licensee in an amount not to exceed $500 for each incident; or
(f) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

(7) Following a final determination resulting in any disciplinary action taken by the board under subsection (4), the board may recover from the disciplined party all reasonable costs of any proceeding, not to exceed $1,000, incurred for the purpose of the disciplinary action. Fines and costs recovered must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1989 Amendment: Inserted (4)(e) authorizing a fine; and inserted (7) relating to recovery of costs and deposit of costs and fines.

Severability: Section 6, Ch. 203, L. 1989, was a severability clause.

37-12-323. Reconsideration of board action — fee for restoration of license.

Compiler's Comments

1981 Amendment: Substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $50" in (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

CHAPTER 13
ACUPUNCTURE PRACTICE ACT

Chapter Compiler's Comments

Severability Clause: Section 17, Ch. 317, L. 1974, was a severability clause.

Chapter Attorney General's Opinions

Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities: No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under this chapter. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under this chapter. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

Part 1
General

37-13-102. Legislative finding and purpose.

Attorney General's Opinions

Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities: No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

37-13-103. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 275, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 393 in definition of acupuncture in (a) substituted current text for former text that read: "“Acupuncture” means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. The term includes the use of acupressure and the use of oriental food remedies and herbs"; inserted (1)(b) regarding adjunctive therapies; and made minor changes in style. Amendment effective April 29, 2021.

1995 Amendment: Chapter 340 in definition of acupuncture substituted "means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities" for "means the treatment of the human body" and at end inserted last sentence relating to acupressure, food remedies, and herbs; and made minor changes in style.

37-13-104. Partial exemptions.

Compiler's Comments

1995 Amendment: Chapter 340 inserted (2) relating to practice within the scope of a health professional's license; inserted (3) relating to practice of an occupation by person not licensed under this chapter; and made minor changes in style.

Attorney General's Opinions

Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities: No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

Part 2
Alternative Health Care Board

Part Administrative Rules

Title 24, chapter 156, subchapter 1, ARM Organizational rule.
Title 24, chapter 156, subchapter 2, ARM Procedural rules.

Part 3
Licensing

37-13-301. License required for practice.

Compiler's Comments

1995 Amendment: Chapter 340 inserted (2) prohibiting the purporting to practice acupuncture and the use of certain titles without license; and made minor changes in style.

Attorney General's Opinions

Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities: No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

37-13-302. Application for licensure — fee — qualifications.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) in first sentence after "shall" substituted "apply to the board for licensure" for "make application for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board"; in (2)(d) after "examination" deleted "prepared and administered by the board or an examination" and at end after "acupuncturists" inserted "or its successor"; and made minor changes in style. Amendment effective July 1, 2005.

1989 Amendment: In (2)(c) substituted "national accreditation commission for schools and colleges of acupuncture and oriental medicine" for "American medical association".

1987 Amendment: In (1), after "application for", substituted "licensure" for "examination", at end of first sentence after "board", deleted "at least 30 days before the date set by the board for the commencement of the examination", and at beginning of second sentence substituted "A fee" for "An examination fee"; in (2)(c), after "acupuncture", substituted language stating school requirements for "or has completed a course in acupuncture approved by the board"; and inserted (2)(d) requiring applicant to pass an examination.

Applicability: Section 3, Ch. 307, L. 1987, provided: "This act applies to applications for a license to practice acupuncture received by the board of medical examiners after September 30, 1987."

1981 Amendments: Chapter 341 deleted former subsection (2)(b) requiring U.S. citizenship.

Chapter 345 substituted "An examination fee prescribed by the board" for "An examination fee of $50" in the last sentence of (1).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Citizenship Qualifications — Preamble: The preamble to Ch. 341, L. 1981, provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

37-13-304. Issuance of certificate of license — license fee.

Compiler's Comments

1981 Amendment: Substituted "upon the payment of a license fee prescribed by the board" for "upon the payment of a $20 license fee" in the middle of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

CHAPTER 14
RADIOLOGIC TECHNOLOGISTS

Chapter Administrative Rules

Title 24, chapter 204, ARM Board of Radiologic Technologists.

Part 1
General

37-14-102. Definitions.

Compiler's Comments

2005 Amendment: Chapter 491 substituted definition of general supervision for former definition that read: ""General supervision" means the procedure is furnished under the radiologist's overall direction and control. However, the radiologist's presence is not required at the site during the performance of the procedure"; in definition of radiologist at end inserted "and who resides and practices in Montana"; in definition of radiologist assistant after "who works under the" deleted "general"; and made minor changes in style. Amendment effective April 28, 2005.

2003 Amendment: Chapter 307 inserted definitions of general supervision, radiologist, and radiologist assistant; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in definition of department after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1989 Amendment: In definition of licensed practitioner deleted "chiropody".

1985 Amendment: In (3) substituted language defining license as authorization issued by the Department to perform x-ray procedures on persons for ""License" means an authorization to apply x-ray radiation to persons issued by the department of commerce"; inserted (5) defining limited permit technician; inserted (6) defining performance of x-ray procedures; in (7) before "x-ray", substituted "perform" for "apply" and after "x-ray" substituted "procedures on" for "radiation to"; in (8) after "who", substituted "has qualified under the provisions of this chapter for the issuance of a license to perform" for "applies", after "x-ray", substituted "procedures on" for "radiation to", after "persons", inserted remainder of (8) to colon, further defining radiologic technologist as person who performs functions in (8)(a) through (8)(f); and inserted (8)(a) through (8)(f) (see 1985 Session Law).

1984 Initiative Amendment: In (4) after "dentistry", inserted "denturitry".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2) and (3); changed internal reference to the board.

Part 2
Board of Radiologic Technologists

Part Administrative Rules

Title 24, chapter 204, subchapter 1, ARM Organizational rules.

Title 24, chapter 204, subchapter 2, ARM Procedural rules.

Title 24, chapter 204, subchapter 5, ARM Licensing and scope of practice.

37-14-201. Compensation of board members — meetings.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former (3) that read: "(3) Four members of the board constitute a quorum for the purpose of transacting business"; and made minor changes in style. Amendment effective October 1, 2001.

1981 Amendment: In (1), deleted the first sentence allowing the board to determine compensation; substituted "receive compensation and" for "be reimbursed for their"; and substituted "37-1-103" for "2-18-501 through 2-18-503, as amended, incurred while on official business of the board".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-14-202. Rulemaking power.

Administrative Rules

Title 24, chapter 204, ARM Board of Radiologic Technologists.

Attorney General's Opinions

Permits for X-Ray Technologists — Board Rules Adding Additional Noncontradictory Requirements to Statute Invalid: Rules of the Board of Radiologic Technologists requiring applicants for permits as radiologic technologists under 37-14-306 to take a 24-hour course approved by the Board, be employed, have at least 6 months' practical experience in the x-ray profession, pass a permit examination, and pay a $65 exam fee are void and unenforceable. The rules engraft additional, noncontradictory requirements on 37-14-306 that were not envisioned by the Legislature, even though the rules may appear to be consistent with the purposes of the statute. 40 A.G. Op. 50 (1984). (See statement of intent attached to Ch. 166, L. 1985, compiler's comments to 37-14-301.)

Part 3
Licensing

Part Administrative Rules

Title 24, chapter 204, subchapter 4, ARM General provisions.

Title 24, chapter 204, subchapter 5, ARM Licensing and scope of practice.

37-14-301. Limitation of license authority — exemptions.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 126 inserted (1)(a)(iv) providing that licensure is not required for a person who only operates industrial x-ray equipment; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 491 in (3) in first sentence near middle inserted "by the use of venous puncture and saline solution flush" and after "upon request" inserted "and direction", in second sentence near middle inserted "or personnel trained in advance cardiac life support" and at end substituted "in the facility" for "within the x-ray department", in fourth sentence near end after "intra-arterial" deleted "or intracatheter", in fifth sentence near middle after "or authorized under" substituted "a separate" for "another", and inserted sixth sentence authorizing radiologist assistant to give certain injections; and made minor changes in style. Amendment effective April 28, 2005.

2003 Amendment: Chapter 307 in (3) in fourth sentence at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: In (1)(a)(i) deleted "chiropody".

1985 Amendments: Chapter 166 in (1) and (2) before "x-ray" substituted "perform" for "apply" and after "x-ray" substituted "procedures on" for "radiation to"; in (1) following "licensed", inserted "or granted a limited permit"; inserted (1)(a)(iii) exempting from licensure requirements a person who performs only darkroom procedures under supervision of a licensed radiologic technologist or radiologist or who can show evidence of formal training in darkroom procedures; at end of (2) substituted "procedures" for "examinations or treatments"; in last sentence of (3), after "technologist", substituted "limited permit technician" for "permitholder" and after "37-14-306", inserted "or an individual who is not licensed or authorized under another licensing act".

Chapter 548 in (1)(a)(ii), after "denturitry", inserted proviso constituting remainder of subsection.

Statement of Intent: The statement of intent attached to Ch. 166, L. 1985, provided: "This bill is a response to Volume 40 Opinions of the Attorney General No. 50. A statement of intent is required for this bill because it delegates rulemaking authority to the board of radiologic technologists.

It is the intent of the legislature that the board be required by section 3 of this bill [amending 37-14-301] to adopt rules establishing the standards of formal classroom training in darkroom procedures for those individuals who, by reason of their training and the fact that they perform only darkroom procedures, are exempt from licensure.

It is the intent of the legislature that the board be required by section 4 of this bill [amending 37-14-306] to adopt rules:

(1) setting standards of formal classroom training for permit holders;

(2) defining specific x-ray procedures the permit holders will be allowed to perform;

(3) regarding the renewal of permits;

(4) establishing a written and oral portion of the examination and defining the circumstances under which those portions will be required;

(5) outlining additional eligibility requirements when an applicant fails an examination; and

(6) defining adequate evidence of regional hardship, emergency conditions, and capability to perform high-quality x-ray procedures.

It is the intent of the legislature that section 6 of this bill [amending 37-14-310, now repealed] require that the department of commerce [now department of labor and industry] establish renewal dates for licenses.

Further, it is the intent of the legislature that section 7 of this bill [amending 37-14-321, now repealed] delegate authority to the board to adopt rules defining unethical conduct for the purpose of establishing disciplinary standards for limited permit technicians."

1984 Initiative Amendment: In (1)(a)(ii) after "practice of dentistry", inserted "or denturitry".

1981 Amendment: Substituted "specific direction" for "direct supervision" before "of a person licensed" in (1)(a)(i); added subsection (3) regulating injection of contrast media and radioactive isotopes.

Administrative Rules

ARM 24.204.504 Permits — practice limitations.

ARM 24.204.507 Course requirements for limited permit applicants.

37-14-302. Qualifications.

Compiler's Comments

1981 Amendment: Deleted "other than those qualifying under 37-14-312" after "radiologic technologist" in (1); deleted "including those qualifying under 37-14-312" after "radiologic technologist" in (2).

37-14-305. Issuance of license or permit — fee.

Compiler's Comments

1981 Amendment: Deleted ", not to exceed $50," after "fee set by the board" near the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Section Not Codified: Section 66-3708, R.C.M. 1947, a temporary section providing for licensure without examination of persons employed as radiologic technicians prior to October 9, 1976, has not been codified in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 9, Ch. 336, L. 1975, as amended by sec. 6, Ch. 310, L. 1977.

Subsections (1)(a), (1)(c), and (2) of section 66-3708.1, R.C.M. 1947, temporary subsections providing for licensure without examination of persons who can demonstrate practical proficiency in radiologic technology and who have been employed as radiologic technicians prior to October 9, 1976, have not been codified in the MCA. These subsections have not been repealed and are still valid law. Citation may be made to the same subsections of sec. 7, Ch. 310, L. 1977, as amended by sec. 1, Ch. 573, L. 1977.

Administrative Rules

ARM 24.204.401 Fee schedule.

ARM 24.204.404 Permit fees.

ARM 24.204.414 Hardship temporary permits.

37-14-306. Permits.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (2) that read: "(2) Examinations for the issuance of a permit must include a written portion and may also include practical and oral portions as established by the board. The board shall provide applicants for permits the opportunity for examination at intervals not to exceed 6 months. A nonrefundable examination fee, established by the board, must be submitted prior to examination for a permit. An applicant failing the examination must be charged a nonrefundable examination fee for any subsequent examination. An applicant failing any subsequent examination shall meet any additional eligibility requirements established by rule for reexamination"; and made minor changes in style. Amendment effective July 1, 2005.

1985 Amendment: Throughout section, after "x-ray", substituted "procedures" for "examinations"; in (1), in first sentence, after "satisfaction of", deleted "a physician specializing in radiology approved by", inserted second sentence requiring an applicant to demonstrate the capability of performing high-quality x-ray procedures by completion of formal training, in third sentence, after "x-ray procedures", inserted "defined and established by rule", and in last sentence, substituted "established by rule" for "for original issuance"; inserted (2) setting forth examination requirements and procedures; in (4) in first sentence, before "persons", substituted "unlicensed" for "uncertified" and inserted last sentence providing that evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures must be established by rule; and inserted (5) stating applicant requirements.

Statement of Intent: The statement of intent attached to Ch. 166, L. 1985, provided: "This bill is a response to Volume 40 Opinions of the Attorney General No. 50. A statement of intent is required for this bill because it delegates rulemaking authority to the board of radiologic technologists.

It is the intent of the legislature that the board be required by section 3 of this bill [amending 37-14-301] to adopt rules establishing the standards of formal classroom training in darkroom procedures for those individuals who, by reason of their training and the fact that they perform only darkroom procedures, are exempt from licensure.

It is the intent of the legislature that the board be required by section 4 of this bill [amending 37-14-306] to adopt rules:

(1) setting standards of formal classroom training for permit holders;

(2) defining specific x-ray procedures the permit holders will be allowed to perform;

(3) regarding the renewal of permits;

(4) establishing a written and oral portion of the examination and defining the circumstances under which those portions will be required;

(5) outlining additional eligibility requirements when an applicant fails an examination; and

(6) defining adequate evidence of regional hardship, emergency conditions, and capability to perform high-quality x-ray procedures.

It is the intent of the legislature that section 6 of this bill [amending 37-14-310, now repealed] require that the department of commerce [now department of labor and industry] establish renewal dates for licenses.

Further, it is the intent of the legislature that section 7 of this bill [amending 37-14-321, now repealed] delegate authority to the board to adopt rules defining unethical conduct for the purpose of establishing disciplinary standards for limited permit technicians."

Administrative Rules

Title 24, chapter 204, subchapter 5, ARM Licensing and scope of practice.

Attorney General's Opinions

Permits for X-Ray Technologists — Board Rules Adding Additional Noncontradictory Requirements to Statute Invalid: Rules of the Board of Radiologic Technologists requiring applicants for permits as radiologic technologists under 37-14-306 to take a 24-hour course approved by the Board, be employed, have at least 6 months' practical experience in the x-ray profession, pass a permit examination, and pay a $65 exam fee are void and unenforceable. The rules engraft additional, noncontradictory requirements on 37-14-306 that were not envisioned by the Legislature, even though the rules may appear to be consistent with the purposes of the statute. 40 A.G. Op. 50 (1984). (See statement of intent attached to Ch. 166, L. 1985, compiler's comments to this section.)

37-14-307. Duty to carry or display license or permit.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: After "technologist" inserted "or limited permit technician"; and after "carry" inserted "or display".

37-14-308. Issuance of other documents.

Administrative Rules

ARM 24.204.411 Replacement licenses and permits.

37-14-311. Deposit of fees.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-14-322. Inspections.

Compiler's Comments

2001 Amendment: Chapter 483 in (2) substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1995 Amendments: Chapter 418 in (3) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (3) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in subsection (2).

CHAPTER 15

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Chapter Administrative Rules

Title 24, chapter 222, ARM Board of Speech-Language Pathologists and Audiologists.

Part 1

General

37-15-101. Purpose.

Compiler's Comments

2005 Amendment: Chapter 262 near end after "with communicative" substituted "disorders" for "disabilities". Amendment effective October 1, 2005.

1997 Amendment: Chapter 472 near end substituted "people of this state with communicative disabilities" for "communicatively handicapped people of this state"; and made minor changes in style.

1989 Amendment: Changed references to speech pathology and speech pathologist to references to speech-language pathology and speech-language pathologist.

37-15-102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2021 Amendments — Composite Section: Chapter 78 substituted audiology assistant for audiology aide or assistant as defined term; in definition of facilitator near end of last sentence substituted "audiology assistant or a speech-language pathology assistant" for "audiology or speech-language pathology aide or assistant"; in definition of patient in middle inserted references to speech-language pathology assistant and audiology assistant; substituted speech-language pathology assistant for speech-language pathology aide or assistant as defined term; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 497 in the definition of facilitator and patient substituted "telehealth" for "telemedicine"; deleted definition of telepractice that read: ""Telepractice" means the practice of audiology or speech-language pathology by an audiologist or speech-language pathologist at a distance through any means, method, device, or instrumentality for the purposes of assessment, intervention, and consultation" and inserted definition of telehealth; and made minor changes in style. Amendment effective October 1, 2021.

2013 Amendment: Chapter 162 deleted definition that read: ""Association" means the Montana speech-language and hearing association"; inserted definitions of facilitator, patient, and telepractice; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 342 in definition of practice of audiology at end inserted "and includes the selling, dispensing, and fitting of hearing aids". Amendment effective October 1, 2011.

2005 Amendment: Chapter 262 deleted definition of ASHA that read: ""ASHA" means the American speech-language hearing association"; substituted audiology aide or assistant for audiology aide as defined term; substituted definition of practice of audiology for former definition that read: ""Practice of audiology" means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;

(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;

(c) fabricating ear molds;

(d) providing auditory training and speech reading;

(e) conducting tests of vestibular function;

(f) evaluating tinnitus;

(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and

(h) speech or language screening, limited to a pass/fail determination"; substituted definition of practice of speech-language pathology for former definition that read: ""Practice of speech-language pathology" means rendering or offering to render a service in speech-language pathology to individuals or groups of individuals who have or are suspected of having communication disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;

(b) determining the need for augmentative communication systems and providing training in the use of these systems;

(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;

(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination;

(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment;

(f) oral motor rehabilitation, which includes services and procedures for evaluating and facilitating face, lip, and tongue mobility and control;

(g) cognitive retraining, which includes services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult; and

(h) dysphagia therapy, which includes services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders"; substituted speech-language pathology aide or assistant for speech-language pathology aide as defined term; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1995 Amendment: Chapter 429 deleted definition of unethical conduct that read: ""Unethical conduct" means:

(a) the obtaining of a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide; or

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 93 in definition of practice of speech-language pathology inserted subsections referencing the services of oral motor rehabilitation, cognitive retraining, and dysphagia therapy; and made minor changes in style.

1989 Amendment: Throughout section changed "speech" to "speech-language"; in (3), at end of first sentence after "who", inserted clause relating to qualifications, at beginning of second sentence, before "presents", inserted clause relating to representing oneself as a speech-language pathologist, after "services" inserted "or functions that he directly or indirectly performs", and after "incorporating the words" substituted current list of services and functions for ""speech pathologist", "speech correctionist", "speech therapist", "speech clinician", "language pathologist", "language therapist", "language clinician", or any similar title or description of services"; in (5), at end of first sentence after "who", inserted clause relating to qualifications, at beginning of second sentence, before "presents", inserted clause relating to representing oneself as an audiologist, after "services" inserted "or functions that he directly or indirectly performs", and after "incorporating the words" substituted current list of services for ""audiologist", "hearing clinician", "hearing therapist" or any similar title or description of services"; in (7), after ""Practice of speech-language pathology" means", substituted language of first sentence relating to rendering of services to persons suspected of having communication disorders for "the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of evaluating, preventing, habilitating, rehabilitating, or modifying such disorders and conditions in individuals or groups of individuals" and inserted (7)(a) through (7)(e) listing services included in the practice of speech-language pathology; in (8), after ""Practice of audiology" means", substituted language of first sentence relating to rendering of services to persons suspected of having hearing disorders for "the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, or auditory function, including auditory behavior related to hearing impairment" and inserted (8)(a) through (8)(h) listing services included in the practice of audiology; and deleted definition of provisionally licensed speech pathologist or audiologist.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Administrative Rules

Title 24, chapter 222, subchapter 7, ARM Speech pathology and audiology aides.

Attorney General's Opinions

Certified Hearing Aid Audiologist — Licensure Required: By enacting a licensure act for audiologists and defining the term "audiologist" to include similar terms, the Legislature intended that anyone using the term "audiologist" in whatever manner as a professional title or description of services must be licensed by the Board of Speech Pathologists (now Speech-Language Pathologists) and Audiologists. 42 A.G. Op. 1 (1987).

Rule Invalid — Direct Conflict With Definition — Board of Speech Pathologists (Now Speech-Language Pathologists) and Audiologists: An administrative rule adopted by the Board of Speech Pathologists (now Speech-Language Pathologists) and Audiologists that was in direct conflict with the definition of "audiologist" in this section and that purported to authorize "certified hearing aid audiologists" is invalid. 42 A.G. Op. 1 (1987).

37-15-103. Exemptions — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2011 Amendments — Composite Section: Chapter 19 in (7) after "who" substituted "is licensed" for "holds a certificate of registration" and substituted "hearing aid dispenser" for "hearing aid dealer". Amendment effective October 1, 2011.

Chapter 342 in (8)(a) at beginning deleted "This chapter does not exempt", after "hearing aids" inserted "is exempt", and at end inserted exception clause; inserted (8)(b) relating to adopting rules; and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendment: Chapter 262 in (2) near middle after "position for which" substituted "the activities were performed" for "they were employed"; in (5) in second sentence near end after "established by this chapter" deleted "or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent"; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendment: Chapter 367 inserted (2)(b) providing that nothing in this chapter restricts a cooperative from hiring on an annual basis a person to provide speech-language pathology-related services who does not meet this chapter's licensing requirements if the cooperative has tried to hire appropriately trained personnel, has hired the most qualified unlicensed person and the person has completed at least a 4-year program in speech-language pathology or communication disorders and can prove ongoing study to meet licensing requirements within 3 years after being hired, and has contracted with a licensed person to provide the unlicensed hired person consultation and training; inserted (2)(c) stating when an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel is presumed to be met; inserted (2)(d) providing that a cooperative hiring an unlicensed person shall try to hire a licensed person each year and comply with subsection (2) each year and providing that an unlicensed person may be employed under subsection (2)(b) for no more than 3 years after the hiring date; and made minor changes in style. Amendment effective April 20, 1999, and terminates June 30, 2003.

Retroactive Applicability: Section 6, Ch. 367, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1998."

1989 Amendment: Throughout section changed "speech" to "speech-language"; inserted (8) regarding nonexemption from provisions relating to hearing aid dispensers; and made minor changes in phraseology.

Attorney General's Opinions

Audiologist as Agent for Hearing Aid Dispenser: There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions is entitled to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery. 38 A.G. Op. 42 (1979). (See 1985 amendment to 37-16-103.)

Selection of Best Hearing Aid for Client: No person may select a particular hearing aid for any other person and force the hearing aid dispenser from whom the hearing aid is purchased to abide by that decision. When a licensed hearing aid dispenser sells a hearing aid he is entitled, if not obligated, to use his training and judgment to select the best hearing aid for that client. 38 A.G. Op. 42 (1979). (See 1985 amendment to 37-16-103.)

When Hearing Aid Dispenser's License Not Required: A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit a hearing aid, whether permanently or for a trial period, without a dispenser's license. 38 A.G. Op. 42 (1979). (See 1985 amendment to 37-16-103.)

Part 2
Board of Speech-Language Pathologists and Audiologists

Part Administrative Rules

Title 24, chapter 222, subchapter 1, ARM Organizational rule.
Title 24, chapter 222, subchapter 2, ARM Procedural rules.
Title 24, chapter 222, subchapter 21, ARM Continuing education rules.

37-15-201. Meetings.

Compiler's Comments

2001 Amendment: Chapter 492 in third sentence at beginning deleted "A quorum of the board shall consist of the majority of its members"; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendment: Changed reference to speech pathologist to reference to speech-language pathologist.

37-15-202. Powers and duties of board and department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 349, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 497 in (1)(d) near end after "standards for" substituted "telehealth" for "telepractice"; and made minor changes in style. Amendment effective October 1, 2021.

2013 Amendment: Chapter 162 in (1)(d) after "practice" inserted "or standards for telepractice"; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendment: Chapter 429 deleted former (1)(c) that required Board to investigate persons engaging in practices that allegedly violate the provisions of this chapter; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1989 Amendment: Changed "speech pathology" to "speech-language pathology".

Administrative Rules

Title 24, chapter 222, ARM Board of Speech-Language Pathologists and Audiologists.

Attorney General's Opinions

Rule Invalid — Direct Conflict With Definition — Board of Speech Pathologists (Now Speech-Language Pathologists) and Audiologists: An administrative rule adopted by the Board of Speech Pathologists (now Speech-Language Pathologists) and Audiologists that was in direct conflict with the definition of "audiologist" in 37-15-102 and that purported to authorize "certified hearing aid audiologists" is invalid. 42 A.G. Op. 1 (1987).

37-15-203. Compensation and expenses.

Compiler's Comments

1981 Amendment: After "receive" substituted language providing that Board members receive compensation and travel expenses as provided in 37-1-133 for "travel expenses and mileage incidental to board meetings and business, as provided for in 2-18-501 through 2-18-503, as amended. Compensation may be paid each board member not otherwise compensated in the amount of $25 per day when attending board meetings".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3
Licensing

Part Administrative Rules

Title 24, chapter 222, subchapter 5, ARM Licensing and scope of practice.

37-15-301. License required.

Compiler's Comments

2021 Amendment: Chapter 78 in (2) in middle inserted references to a speech-language pathology assistant and an audiology assistant; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 90 inserted (3) concerning limited licenses issued to qualified individuals engaged in supervised professional experience. Amendment effective March 23, 2017.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 367 in (2) inserted exception clause; and made minor changes in style. Amendment effective April 20, 1999, and terminates June 30, 2003.

Retroactive Applicability: Section 6, Ch. 367, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1998."

1989 Amendment: Changed references to speech pathology and speech pathologist to references to speech-language pathology and speech-language pathologist.

37-15-302. Application forms.

Compiler's Comments

2021 Amendment: Chapter 78 at beginning substituted "application to be licensed as" for "application for examination for licensing"; in middle inserted references to a speech-language pathology assistant and an audiology assistant; and made minor changes in style. Amendment effective October 1, 2021.

2007 Amendment: Chapter 502 at end after "prescribed by the" substituted "department" for "board"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1989 Amendment: Changed reference to speech pathologist to reference to speech-language pathologist.

Subsections Not Codified: Subsections (2), (4), and (5) of section 66-3908, R.C.M. 1947, dealing with licensure prior to July 1, 1976, and waiver of required examinations, were temporary law and have not been codified in the MCA. These portions of section 66-3908, R.C.M. 1947, have not been repealed and are still valid law. Citation may be made to the same subsections of sec. 9, Ch. 543, L. 1975.

37-15-303. Qualifications.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 457, L. 2023. Amendment effective January 1, 2024.

2021 Amendment: Chapter 78 inserted (2) concerning eligibility for licensure as a speech-language pathology assistant or an audiology assistant; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 90 in (1)(a) substituted "supervised professional experience" for "postclassroom sponsored employment". Amendment effective March 23, 2017.

2005 Amendment: Chapter 262 in (1)(a) at end after "employment requirements" substituted "as defined by board rule" for "of the ASHA"; inserted (3) regarding standards defined by the board; and made minor changes in style. Amendment effective October 1, 2005.

1989 Amendment: Changed reference to speech pathologist to reference to speech-language pathologist.

37-15-307. Application and license fee.

Compiler's Comments

2021 Amendment: Chapter 78 in (1) inserted references to a speech-language pathology assistant and an audiology assistant; in (3) after "license" deleted "or registration"; deleted former (4) and (5) that read: "(4) examinations; and (5) registration as a speech-language pathology aide or assistant or audiology aide or assistant"; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 90 substituted text relating to board-determined fees for former text that read: "The amount of fees prescribed in connection with a license as a speech-language pathologist or audiologist and with registration as a speech-language pathology aide or assistant or audiology aide or assistant must be determined by the board each year based on costs and predicted expenditures." Amendment effective March 23, 2017.

2005 Amendment: Chapter 262 after "pathology aide or" inserted "assistant or" and after "audiology aide" inserted "or assistant"; and made minor changes in style. Amendment effective October 1, 2005.

1989 Amendment: Changed references to speech pathology and speech pathologist to references to speech-language pathology and speech-language pathologist.

1985 Amendment: Near middle of section after "audiologist", inserted "and with registration as a speech pathology aide or audiology aide".

1981 Amendment: Deleted "as follows, the exact fee to be" after "or audiologist shall be" in the middle of the first sentence of the section; and deleted ": (1) application and examination fee for a license, no less than $50 or more than $100; (2) license fee and renewal thereof, no less than $25 or more than $100" after "based on costs and predicted expenditures" at the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.222.401 Fees.

37-15-310. Deposit of moneys received.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-15-311. Municipal tax prohibited.

Compiler's Comments

2021 Amendment: Chapter 78 inserted references to speech-language pathology assistants and audiology assistants; and made minor changes in style. Amendment effective October 1, 2021.

1989 Amendment: Changed reference to speech pathologist to reference to speech-language pathologist.

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-15-314. Telehealth — authorization — assistants.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 349, L. 2023. Amendment effective October 1, 2023.

2021 Amendment — Coordination: Chapter 497 in (1) and (2) near beginning after "speech-language pathologist" inserted "speech-language pathologist assistant, or audiology assistant"; in (1), (2), and (3) substituted "telehealth" for "telepractice"; in (3) near beginning in two places before "assistant" deleted "aide or", deleted former last sentence that read: "This section does not prohibit an audiology aide or assistant or a speech language pathology aide or assistant from serving as a facilitator", and at end after "telehealth" inserted current language on services that assistants may provide; and made minor changes in style. Amendment effective October 1, 2021.

The amendments to this section made by sec. 7, Ch. 78, L. 2021, and sec. 9, Ch. 497, L. 2021, were rendered void by sec. 14, Ch. 497, L. 2021, a coordination section.

Effective Date: This section is effective October 1, 2013.

37-15-315. Scope of telehealth — requirements.

Compiler's Comments

2021 Amendment: Chapter 497 throughout section substituted "telehealth" for "telepractice". Amendment effective October 1, 2021.

Effective Date: This section is effective October 1, 2013.

Part 4
Audiology and Speech-Language Pathology Interstate Compact

37-15-401. Enactment — provisions.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

37-15-402. Criminal background check.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

CHAPTER 16
HEARING AID DISPENSERS

Part 1
General

37-16-101. Declaration of policy.

Compiler's Comments

1985 Amendment: Near beginning, after "selling", inserted "dispensing".

37-16-102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2009 Amendment: Chapter 34 inserted definitions of permanent place of business and place of practice; and made minor changes in style. Amendment effective October 1, 2009.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1985 Amendment: In (5) at beginning, after "Practice of", inserted "selling", and near middle after "sale", inserted "dispensing, or fitting".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Chapter 444 substituted ""License" means a regular or trainee license" for ""License" means a regular or temporary license" in (3); and inserted "and the subsequent selection of a proper ear mold" after "the making of an impression of the ear" near the end of (5).

37-16-103. Exemptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2011 Amendment: Chapter 342 inserted (3) concerning licensed audiologists; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1985 Amendment: In (2) after "public agency", deleted "or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids".

Attorney General's Opinions

Audiologist as Agent for Hearing Aid Dispenser: There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions is entitled to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery. 38 A.G. Op. 42 (1979). (See 1985 amendment.)

When Hearing Aid Dispenser's License Not Required: A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit a hearing aid, whether permanently or for a trial period, without a dispenser's license. 38 A.G. Op. 42 (1979). (See 1985 amendment.)

When Audiologist May Fit Hearing Aids: A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may make an impression of the ear (which is expressly part of the practice of fitting and dispensing hearing aids) without being licensed as a hearing aid dispenser. This exemption may be enjoyed only if the hearing aids are not sold. A "sale" includes a sale at a profit, at cost, or even at a loss. 38 A.G. Op. 42 (1979). (See 1985 amendment.)

Selling Hearing Aids — License Required: A charitable or nonprofit organization primarily supported by voluntary contributions or any audiologist or other employee of the organization may dispense free hearing aids without a license, but neither the organization nor its employees may sell hearing aids without a license, regardless of the dispensing program. 37 A.G. Op. 60 (1977). (See 1985 amendment.)

Part 2
Board of Hearing Aid Dispensers

37-16-202. Powers and duties — licensed hearing aid dispenser program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2009 Amendment: Chapter 109 in (1)(b) after "procedure" deleted "to act as a grievance board", before "complaints" substituted "process" for "mediate", and at end after "chapter" deleted "or their agents, whether licensed or not"; in (1)(d) at end after "equipment" deleted "and carry out periodic inspections of facilities of persons who practice or engage in the business of fitting or selling hearing aids"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2005 Amendment: Chapter 467 deleted former (3) and (4) that read: "(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination"; deleted former (7) that read: "(7) prepare examinations required by the chapter"; in (6) in first and second sentences in lists of statutes deleted references to 37-16-403 and 37-16-407; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 481 in (6), after "practice", inserted "or engage in the business of"; in (8), after "person", deleted "or corporation"; inserted (10) requiring Board to adopt minimum requirements for form of bills of sale and receipts; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment — Coordination: Chapter 72 in (2), before "receive", inserted "initiate or".

Section 130, Ch. 429, L. 1995, a coordination section, rendered the amendments made to this section by Ch. 429, L. 1995, void.

Code Commissioner Correction: In (9), in two places, the Code Commissioner deleted references to 37-16-414 pursuant to the authority contained in sec. 73, Ch. 18, L. 1995.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Codification: Enacted (9) requiring adoption of consistent rules regarding related devices.

1991 Statement of Intent: The statement of intent attached to Ch. 155, L. 1991, provided: "A statement of intent is required for this bill because [section 11] [37-16-202(9)] grants the board of hearing aid dispensers authority to adopt rules consistent with the provisions of [sections 1 through 10] [37-16-301, 37-16-303, 37-16-304, now repealed, 37-16-402, 37-16-403, now repealed, 37-16-405, now repealed, 37-16-407, now repealed, 37-16-408, 37-16-411, and 37-16-414, now repealed].

It is the intent of the legislature that rules adopted by the board include rules defining "related devices" and other rules necessary to implement [sections 1 through 10] [37-16-301, 37-16-303, 37-16-304, now repealed, 37-16-402, 37-16-403, now repealed, 37-16-405, now repealed, 37-16-407, now repealed, 37-16-408, 37-16-411, and 37-16-414, now repealed].

It is specifically intended that, in adopting rules, the board define "related devices" to mean those parts, attachments, or accessories, as provided in 37-16-102, that are sold for use with a hearing aid by a licensed hearing aid dispenser. "Related devices" should include assistive listening devices and cordless infrared systems if sold by a hearing aid dispenser. However, the term "related device" should not include general merchandise items, such as hearing aid cleaners, cords, or batteries, that are commonly available at most drugstores, discount stores, or by mail order."

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (8) substituted "sale, dispensing, or fitting" for "sale and fitting".

1981 Amendment: Added "and supervise and administer the examination" at the end of subsection (4).

Administrative Rules

Title 24, chapter 151, ARM Hearing aid dispensers program.

Part 3
Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice — designation of licensee in charge.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

1995 Amendment: Chapter 429 at end of (4)(b)(ii) substituted "department" for "board"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (1), in two places in first sentence after "hearing aids", inserted "and related devices" and in last sentence, before "licensee", inserted "hearing aid dispenser"; near beginning of (3), after "licensed", inserted "hearing aid"; and inserted (4) requiring designation of a person in charge and establishing applicable duties.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (1) changed "A person who obtains a license to dispense" to "A person who is actively engaged in dispensing", and inserted last two sentences requiring dispensers to identify permanent place of business and allowing more than one licensee to work from one permanent place of business; and deleted former (2) that read: "Subsection (1) of this section does not apply to persons who obtain a license as salespeople representing a licensed hearing aid dispenser."

1981 Amendment: Substituted "trainee licenses" for "temporary license" at the end of the first sentence of (3) and in the middle of the second sentence in (3); and added (4) requiring notice of change of address.

37-16-302. Sale of dispensing business.

Compiler's Comments

1985 Amendment: At beginning after "A business", inserted "selling" and after "dispensing", inserted "or fitting".

37-16-303. Bill of sale.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2009 Amendment: Chapter 34 in (1)(a) at end inserted "and if different from the permanent place of business, the address of the place of practice at which the sale was concluded"; in (2)(b) at end substituted "21 CFR 801.420 and 21 CFR 801.421" for "42 CFR 801.420 and 42 CFR 801.421"; and made minor changes in style. Amendment effective October 1, 2009.

2001 Amendment: Chapter 492 in (2)(a) at end after "medically evaluated and that" substituted "there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss" for "the person may benefit from a hearing aid". Amendment effective October 1, 2001.

1997 Amendment: Chapter 481 in (1), after "shall", inserted "upon the sale of a hearing aid or related device" and after "deliver to" substituted "the customer" for "each person supplied with a hearing aid or related device, by him or at his order or direction"; inserted (1)(f) requiring seller to include in bill of sale statement informing customer of right to contact state Board with questions regarding hearing aids and providing Board telephone number and address; substituted language in (2)(a) and (2)(b) prohibiting sale of hearing aid without physician's statement regarding medical evaluation of hearing loss and waiver of physician's statement for person 18 years of age or older for former (2)(a) and (2)(b) that read: "Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, if dealing with a person under 19 years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain the otolaryngologist's recommendations. If the person has not been examined, the licensed hearing aid dispenser shall recommend to the parent or guardian or to the person if emancipated that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation.

(b) Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, if the aid or device is to be purchased with state funds, ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain the licensed physician's recommendations. If the person has not been examined, the licensed hearing aid dispenser shall recommend to the person being fitted that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation"; deleted (3) through (5) that read: "(3) A separate receipt issued under subsection (2) must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dispenser in connection with the dispensing, fitting, and selling of this hearing aid(s) or device is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."

(4) The board may establish and adopt minimum requirements for the form of bills of sale and receipts.

(5) All purchase agreements or bills of sale must prominently display the following statement: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, please contact the Department of Commerce — Board of Hearing Aid Dispensers"; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1991 Amendment: Throughout section inserted reference to related devices; substituted (1)(c) requiring inclusion of warranty or guaranty and the right to cancel and those terms in the bill of sale for former language relating to terms of guaranty; inserted (1)(e) requiring a provision regarding availability of maintenance in the bill of sale; substituted second and third sentences of (2)(a) regarding recommendation for a medical examination for a person under 19 years of age for former second sentence that read: "If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt"; substituted second and third sentences of (2)(b) regarding recommendation for a medical examination for a person being fitted with a device being purchased with state funds for former second sentence that read: "If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt"; inserted (4) allowing the Board to adopt minimum form requirements; inserted (5) requiring display of a consumer rights statement; and made minor changes in style.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (1) near beginning of first sentence, after "practices the", inserted "selling", and after "address of his", changed "regular" to "permanent"; in (2)(a) near beginning, after "practicing the", inserted "selling, dispensing, or", after "fitting", deleted "and sale", after "a person", changed "18" to "under 19", and after "age", deleted "and under or when the aid is to be purchased with state funds"; inserted (2)(b) relating to purchase of hearing aid with state funds; and in (3) near middle, changed "hearing aid dealer and fitter" to "hearing aid dispenser" and after "with the", inserted "dispensing".

Part 4
Licensing

37-16-401. License required — exception.

Compiler's Comments

2011 Amendment: Chapter 342 at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2011.

1995 Amendment: Chapter 72 after "advertise" deleted "or hold himself out as a person who practices" and after "current" deleted "regular or temporary"; and made minor changes in style.

1985 Amendment: Near beginning, after "engage in", changed "the sale or practice of dispensing and" to "selling, dispensing, or"; near middle, after "practices the", changed "dispensing and fitting" to "selling, dispensing, or fitting"; and near end, after "hearing aids", inserted "in Montana".

Attorney General's Opinions

When Hearing Aid Dispenser's License Not Required: A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit a hearing aid, whether permanently or for a trial period, without a dispenser's license. 38 A.G. Op. 42 (1979). (See 1985 amendment.)

Selling Hearing Aids — License Required: A charitable or nonprofit organization primarily supported by voluntary contributions or any audiologist or other employee of the organization may dispense free hearing aids without a license, but neither the organization nor its employees may sell hearing aids without a license, regardless of the dispensing program. 37 A.G. Op. 60 (1977). (See 1985 amendment.)

37-16-402. Hearing aid dispenser license required — qualifications — fee.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: In (2), after "high school", deleted "has continuously engaged in the practice of selling, fitting, or dispensing hearing aids in Montana during the 3 years preceding the date of application"; and made minor change in style.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (2) near middle, after "practice of", substituted "selling, fitting, or dispensing hearing aids in Montana" for "fitting and dispensing hearing aids".

1981 Amendments: Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $50" in the middle of the first sentence of the section.

Chapter 444 substituted "a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board" for "a fee of $50" near the beginning of the section; deleted "or" after "an accredited high school" near the beginning of subsection (2); and added "or that he holds a current license as an audiologist under Title 37, chapter 15" to the end of subsection (2).

Composite Section: The amendment to the fee provision contained in Ch. 444 was codified rather than the language in the Ch. 345 amendment because Ch. 444 contained broader language that included the Ch. 345 amendment.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

Title 24, chapter 151, ARM Hearing aid dispensers program.

37-16-408. Deposit of fees, fines, and costs.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

1991 Amendment: Near beginning, after "fines", inserted "and costs"; and made minor change in style.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1987 Amendment: Near beginning, after "chapter", inserted "except those collected by a justice's court".

1985 Amendment: Near beginning after "Fees", inserted "and fines".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted "by the department" after "Fees collected" at the beginning of the section; inserted "appropriations and" after "subject to" near the end of the section.

37-16-411. Revocation or suspension of license — investigations — fines.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 483, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 483, L. 2023, provided: "WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids."

2009 Amendment: Chapter 109 in (1) in second sentence after "chapter" inserted "or board rules", after "board may" inserted "institute a proceeding", and at end after "37-1-136" substituted "and 37-1-137" for "suspend or revoke the accused person's license or suspend or deny the person's application for a fixed period to be determined by the board"; in (2) at beginning of introductory clause substituted "licensee or license applicant may be sanctioned as provided in 37-1-312" for "person licensed under this chapter may have the license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed $500 per incident"; in (2)(a) at end of second sentence after "grounds for" substituted "imposing sanctions" for "revocation or suspension"; deleted former (2)(j) that read: "(j) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, or questionable credit standing or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services"; deleted former (2)(l) that read: "(l) obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 72 inserted (1) concerning Board investigation of an alleged violation of this chapter by a licensee or applicant for licensure; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1991 Amendment: Near beginning, after "person", substituted "licensed" for "registered"; near middle of (8) inserted reference to related devices; in (15), near beginning and near middle, inserted reference to related devices and at end substituted "for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale" for "in cases of selling replacement hearing aids"; inserted (16) regarding falsifying test results and records; and inserted (17) regarding refusal to cooperate with a Board investigation.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In lead-in, after "by the board", inserted "or be fined not to exceed $500 per incident"; in (3), after "profession", deleted "with fraudulent intent"; in (8), near middle after "clinic", inserted "hearing clinic" and at end, deleted "The term "hearing center" shall be discontinued in accordance with the code of ethics of the national hearing aid society"; and inserted (11) referring to use of method of prohibited advertising.

37-16-412. Revocation, suspension, or denial — notice and hearing.

Compiler's Comments

1981 Amendment: Added "as provided under the Montana Administrative Procedure Act" at the end of the section.

CHAPTER 17
PSYCHOLOGISTS

Chapter Compiler's Comments

Severability Clause: Section 15, Ch. 73, L. 1971, was a severability clause.

Chapter Administrative Rules

Title 24, chapter 189, ARM Board of Psychologists.

Part 1
General

37-17-102. Definitions.

Compiler's Comments

2009 Amendment: Chapter 2 in definition of accredited college or university substituted “northwest commission on colleges and universities” for “northwest association of schools and colleges”; and made minor changes in style. Amendment effective October 1, 2009.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted “part 17” for “part 18”. Amendment effective July 1, 2001.

1995 Amendment: Chapter 18 at end of (1) substituted “schools and colleges” for “secondary and higher schools”; and made minor changes in style.

1987 Amendment: Near end of (4) inserted “whether or not he does so” before “for compensation”; and substituted definition of practice of psychology for former definition that included the application of stated psychological principles and the practice of counseling and testing.

1981 Amendments: Chapter 274 substituted “department of commerce” for “department of professional and occupational licensing” in (3); changed internal references to the department and the board.

Chapter 324 inserted “while representing oneself to be a psychologist” after “the application” near the beginning of (5).

Administrative Rules

ARM 24.189.301 Definitions.

37-17-104. Exemptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 21, Ch. 713, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 195 in (1)(d) near middle of first sentence inserted “or 45 consecutive calendar days”. Amendment effective October 1, 2019.

2017 Amendment: Chapter 158 in (1)(a) in middle inserted “marriage and family therapists licensed under Title 37, chapter 37”; in (3) in first sentence inserted reference to Title 37, chapter 37, and in second sentence inserted “and licensed marriage and family therapists”; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendments — Composite Section: Chapters 130 and 288 in (3) substituted “board of behavioral health” for “board of social work examiners and professional counselors” and deleted former third sentence that read: “Final rules must be adopted by October 1, 2010.” Amendments effective October 1, 2015.

2009 Amendment: Chapter 453 in (1) at beginning inserted exception clause; in (1)(a) inserted “professional counselors licensed under Title 37, chapter 23”; inserted (2) relating to performance of psychological testing, evaluation, and assessment; inserted (3) requiring board of social workers and professional counselors to adopt rules relating to certain licensees; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 126 in (1) at end after “““psychologist””” inserted “““psychological”, or “psychologic”””; in (2) near middle after “educational” deleted “or charitable”, after “institution” inserted “business corporation, or research laboratory”, and near end after “position” substituted “within the confines of” for “with”; in (3) at end after “study” inserted “of the student, intern, or resident in psychology”; in (4) near end after “state” inserted “prior to providing those services”; in (5) near middle after “who has” substituted “submitted a completed application” for “applied”; deleted former (6) that read: “(6) the use of the term “social psychologist” by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection”; in (6) after “services” deleted “for a fee by a person exempted from licensing requirements by virtue of his employment”; deleted former (8) that read: “(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization"; and made minor changes in style. Amendment effective July 1, 2005.

1987 Amendment: Near beginning of (2) inserted "clearly delineating the nature and level of training".

1981 Amendment: Deleted "and the codes of ethics of their respective professions" after "their training" in (1).

Administrative Rules

ARM 24.189.414 Nonresident psychological services.

Title 24, chapter 219, subchapter 10, ARM Qualifications of social workers and professional counselors to perform psychological testing, evaluation, and assessment.

Part 2

Board of Psychologists

Part Compiler's Comments

Transition — Initial Appointments: Section 7, Ch. 671, L. 1991, provided: "(1) On September 1, 1991, the governor shall appoint one person to a 5-year term on the board of psychologists.

(2) On September 1, 1992, the governor shall appoint one person to a 5-year term on the board and one person to a 1-year term on the board. At the expiration of the 1-year term, the governor shall reappoint the same board member to a 5 year term. At the expiration of the 5-year term, appointments must be made in accordance with 2-15-1851 [renumbered 2-15-1741].

(3) On September 1, 1993, the governor shall appoint one person to a 1-year term on the board and one person to a 2-year term. At the end of those terms, the governor shall reappoint those same board members each to a 5 year term. At the expiration of the 5-year terms, appointments must be made in accordance with 2-15-1851 [renumbered 2-15-1741]."

Part Administrative Rules

Title 24, chapter 189, subchapter 1, ARM Organizational rule.

Title 24, chapter 189, subchapter 2, ARM Procedural rules.

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal.

Compiler's Comments

2001 Amendment: Chapter 492 in (1) deleted former fifth sentence that read: "The quorum of the board consists of the majority of its members"; and made minor changes in style. Amendment effective October 1, 2001.

1981 Amendment: In (2), inserted "compensation and" after "receive", and substituted "37-1-133" for "2-18-501 through 2-18-503, as amended, incidental to board meetings".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Administrative Rules

ARM 24.189.101 Board organization.

37-17-202. Powers.

Compiler's Comments

1995 Amendment: Chapter 429 deleted (2)(e) that authorized Board to adopt rules for the administration of a continuing education program, including but not limited to accrediting education programs and establishing the number of hours of continuing education required for license renewal; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: Inserted (2)(e) concerning adopting rules for administering continuing education program, including accrediting education programs and establishing number of hours of continuing education required for license renewal. Amendment effective July 1, 1991, except rules adopted by Board of Psychologists may not be implemented until January 1, 1992.

1991 Statement of Intent: The statement of intent attached to Ch. 671, L. 1991, provided: "A statement of intent is required for this bill because it grants the board of psychologists the authority to make rules for establishing and administering a continuing education program for psychologists. It is intended that rules require the number of hours of continuing education necessary to maintain professional competency."

Administrative Rules

Title 24, chapter 189, subchapter 4, ARM General provisions.

Title 24, chapter 189, subchapter 6, ARM Licensure.

Title 24, chapter 189, subchapter 21, ARM Continuing education.

Case Notes

Board of Psychologists — Immunity From Suit: Rahrer sought to hold the Board of Psychologists liable for damages arising out of a contested case hearing involving the Board's investigation of a complaint against Rahrer, a licensed psychologist. Applying Butz v. Economou, 438 US 478, 57 L Ed 2d 895, 98 S Ct 2894 (1978), and Koppen v. Bd. of Medical Examiners, 233 M 214, 759 P2d 173, 45 St. Rep. 1433 (1988), the Supreme Court held that the Board of Psychologists was entitled to quasi-judicial immunity. Initiating, investigating, and presenting a case pursuant to the Montana Administrative Procedure Act involve precisely the types of decisions for which the state and its agencies are granted quasi-judicial immunity. Rahrer v. Bd. of Psychologists, 2000 MT 9, 298 M 28, 993 P2d 680, 57 St. Rep. 53 (2000).

Invalid Rule Under Grandfather Clause: Section 66-3208(4), R.C.M. 1947 (deleted by sec. 317, Ch. 350, L. 1974), a grandfather clause, allowed licensure of an established psychologist without a doctoral degree if he had 5 years of professional experience and a master's degree. A rule adopted by the Board of Psychologists required the professional experience to have been obtained after receiving the master's degree. The rule was held invalid because it imposed the additional requirement of a chronological order in which requirements were to be met not envisioned by the Legislature. McPhail v. Mont. Bd. of Psychologists, 196 M 514, 640 P2d 906, 39 St. Rep. 290 (1982).

Part 3
Licensing

37-17-301. License required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

Title 24, chapter 189, subchapter 6, ARM Licensure.

37-17-302. Qualifications.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) that read: "(1) Application for examination for licensure as a psychologist must be made on forms prescribed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 362 deleted former (2)(a) that read: "(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed"; in (2)(c)(iii), after "university and", substituted "has completed a" for "whose"; in (2)(d), in first sentence after "practice", deleted "research, or teaching" and in second sentence, after "postdoctoral", inserted "but may not include more than 6 months of supervised research, teaching, or a combination of both"; and made minor changes in style.

1991 Amendment: In (2)(e), near middle before "experience", inserted "supervised". Amendment effective January 1, 1992.

1987 Amendment: Near beginning of (2)(d)(i) substituted "in clinical psychology" for "based on a program of studies, primarily psychological in content" and at end inserted "approved by the American psychological association"; inserted (2)(d)(ii) allowing licensure of applicant with degree from unaccredited school who has completed an approved retraining program; and inserted (2)(d)(iii) allowing licensure of applicant with degree from an accredited school and whose course of study satisfies Board standards.

Administrative Rules

ARM 24.189.401 Fee schedule.

Case Notes

No Error by District Court in Affirming Final Agency Decision: The petitioner sought licensure as a clinical psychologist and was denied by the Board of Psychologists because he did not meet the educational requirements. The petitioner challenged the board's decision and requested a hearing. The hearing officer found in the petitioner's favor and recommended licensure. The board rejected the hearing officer's findings and again denied licensure. The petitioner sought judicial review of the board's decision and the District Court held in the board's favor. The Supreme Court affirmed and determined that the hearing officer's finding was based on a misinterpretation of the board's rules and was not supported by substantial competent evidence. Mayer v. Bd. of Psychologists et. al., 2014 MT 85, 374 Mont. 364, 321 P.3d 819.

Invalid Rule Under Grandfather Clause: Section 66-3208(4), R.C.M. 1947 (deleted by sec. 317, Ch. 350, L. 1974), a grandfather clause, allowed licensure of an established psychologist without a doctoral degree if he had 5 years of professional experience and a master's degree. A rule adopted by the Board of Psychologists required the professional experience to have been obtained after receiving the master's degree. The rule was held invalid because it imposed the additional requirement of a chronological order in which requirements were to be met not envisioned by the Legislature. McPhail v. Mont. Bd. of Psychologists, 196 M 514, 640 P2d 906, 39 St. Rep. 290 (1982).

37-17-319. Licensure by experience.

Compiler's Comments

Effective Date: Section 5, Ch. 43, L. 2021, provided: "[This act] is effective July 1, 2021."

37-17-320. Licensure of postdoctoral supervisees.

Compiler's Comments

Effective Date: Section 5, Ch. 43, L. 2021, provided: "[This act] is effective July 1, 2021."

Part 4
Behavior Analysis

Part Compiler's Comments

Effective Date: This part is effective October 1, 2017.

37-17-403. License required — qualifications.

Compiler's Comments

2019 Amendment: Chapter 287 in (2)(a) at beginning substituted "submits" for "has submitted"; in (2)(b) at beginning substituted "pays" for "has paid"; in (2)(c) substituted current text for former text that read: "has passed a state-approved criminal background check"; in (2)(d) at beginning substituted "provides" for "has provided"; and made minor changes in style. Amendment effective May 3, 2019.

CHAPTER 18
VETERINARY MEDICINE

Chapter Administrative Rules

Title 24, chapter 225, ARM Board of Veterinary Medicine.

Part 1
General

37-18-101. Definitions.

Compiler's Comments

2021 Amendment: Chapter 392 inserted definitions of direct supervision, emergency, immediate supervision, and indirect supervision; and made minor changes in style. Amendment effective January 1, 2023.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1985 Amendment: In (1) substituted "board of veterinary medicine" for "board of veterinarians".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Administrative Rules

ARM 24.225.301 Definitions.

37-18-102. Veterinary medicine defined.

Compiler's Comments

2021 Amendment: Chapter 392 inserted (3) providing that a licensed veterinary technician must be under the direct, immediate, or indirect supervision of a licensed veterinarian; and made minor changes in style. Amendment effective January 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (1)(g) substituted reference to 37-18-104(4) for reference to 37-18-104(3). Amendment effective May 11, 1989.

1985 Amendment: In (1)(f) inserted "or dentistry".

Administrative Rules

ARM 24.225.301 Definitions.

ARM 24.225.513 Continuing education providers.

Title 24, chapter 225, subchapter 7, ARM Embryo transfer.

37-18-104. Exemptions — rules.

Compiler's Comments

2023 Amendment — Code Commissioner Correction: See 2023 Session Law for amendment made by sec. 9, Ch. 759, L. 2023. Amendment effective July 1, 2023.

In (1)(f) the Code Commissioner substituted "Title 37, chapter 18, part 8," for "[subsections 1 through 8]" to correct an erroneous reference. The reference to "Title 37, chapter 18, part 8," indicates the complete group of sections codified as new Title 37, chapter 18, part 8.

2021 Amendment: Chapter 392 in (1)(c) inserted second sentence allowing the board to define conditions in which a veterinary technician licensed or registered in another state may engage in occasional veterinary technician tasks in this state; in (3) in middle of first sentence before "supervision" inserted "indirect"; in (6) near end of first sentence before "supervision" inserted "direct, immediate, or indirect" and inserted second sentence providing that the board shall adopt rules regarding which veterinary practices may be performed under direct, immediate, or indirect supervision by a licensed veterinary technician; and made minor changes in style. Amendment effective January 1, 2023.

Termination Provision Repealed: Section 1, Ch. 153, L. 2007, repealed sec. 11, Ch. 60, L. 2003, which terminated the 2003 amendments to this section January 1, 2008.

2005 Amendment: Chapter 126 deleted former (1)(c) that read: "(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation"; in (1)(c) near beginning after "veterinarian" substituted "practicing in another state or country" for "residing on a border of a neighboring state", after "that state" inserted "or country", and at end after "medicine" substituted "whose practice in this state is limited to an occasional case as that term is defined in board rule" for "who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 60 inserted (8) providing that nothing in Title 37, chapter 18, prohibits a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance authorized by the board for the purpose of euthanasia. Amendment effective January 1, 2004, and terminates January 1, 2008.

1997 Amendment: Chapter 75 in (1)(e), at beginning after "employment", deleted "as assistants to veterinarians licensed and registered under this chapter" and at end substituted "if the students are employed by and work under the immediate supervision of a veterinarian licensed and registered under this chapter" for "and authorized by law to confer degrees"; in (3), at end of first sentence, deleted "by individuals who attest to the board that they possess a combination of 3 years' education, experience, and training in that procedure", deleted first sentence of former (3)(b) that read: "Exemption under subsection (3)(a) remains in effect until testing and certification procedures, as determined by board rule, are implemented on or before July 1, 1991", and at end, after "rules", inserted "regarding nonsurgical embryo transfers in bovines"; deleted former (3)(b)(ix) that read: "(ix) establishment of an advisory committee. The committee:

(A) must consist of:
(I) one member of the board who is a veterinarian;
(II) one member of the Montana state university-Bozeman reproductive physiology department;
(III) one member representing the Montana stockgrowers association animal health committee;
(IV) one member representing the Montana woolgrowers association;
(V) one reproductive specialist with practical experience in embryo transfers; and
(VI) a veterinarian who is a member of the American college of theriogenologists;
(B) shall make recommendations regarding the testing and certification procedures. The committee may not adopt rules.
(C) in cooperation with the board, shall conduct a study of the practice of bovine pregnancy testing and ovine pregnancy testing with the use of ultrasound equipment. The study must include but is not limited to:
(I) federal laws governing the practice of pregnancy testing;
(II) education and experience requirements for the practice of pregnancy testing; and
(III) pregnancy testing by nonveterinarians.
(D) terminates July 1, 1991"; inserted (6) concerning employee performing functions under supervision of veterinarian; inserted (7) concerning emergency care by employee; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 75, L. 1997, provided: "A statement of intent is required for this bill because 37-18-104(6) and (7) and 37-18-202(1)(c) grant authority to the board of veterinary medicine to adopt rules regarding the limited exemption of certain veterinary support personnel from the practice of veterinary medicine. It is intended that the board be allowed to define by rule the scope of treatments that support personnel may render when working under the supervision of a veterinarian. It is also intended that, in its discretion, the board be allowed to further define situations that constitute emergencies during which support personnel may provide limited care to a veterinarian's animal patients."

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

1991 Amendment: In beginning of (3)(a) inserted "Nonsurgical", after "transfers" inserted "in bovines", and substituted "veterinarian licensed and residing in Montana" for "licensed veterinarian". Amendment effective February 12, 1991.

1989 Amendment: Inserted (1)(f) relating to livestock management practices; inserted (3) regarding performance of embryo transfers and Board rules; and in (4), before "treating", inserted "caring for and", before "employees" inserted "full-time", and after "employees" inserted "as defined in 2-18-601". Amendment effective May 11, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 650, L. 1989, provided: "A statement of intent is required for this bill because 37-18-104, 37-18-202, and 37-18-311 [now repealed] grant to the board of veterinary medicine the authority to adopt rules to implement the provisions of the bill. At a minimum, it is intended that the rules address:
(1) a definition of accepted livestock management practices in order to determine whether a person who advises on the subject is exempt from Title 37, chapter 18;
(2) development of standards for continuing education requirements, which may be supplemental to present board rules on the subject;
(3) a definition of unprofessional conduct to be used in determining whether a license may be refused, suspended, or revoked;
(4) certification of individuals seeking to practice embryo transfers, to be implemented on or before July 1, 1991; and
(5) formation of an advisory committee to make recommendations regarding the certification of individuals seeking to practice embryo transfers."

Applicability: Section 9, Ch. 650, L. 1989, provided: "The provisions of [this act] clarify existing authority of the board of veterinary medicine to regulate veterinary practices. The provisions of Title 2, chapter 8, part 2 [now repealed], and 5-4-207 [now repealed] do not apply to [this act]."

1985 Amendment: In (1)(e) deleted former last two sentences that read: "However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of 6 months from the date of completion of the third year of study".

Case Notes

Employment Contract for Performance of Embryo Transfers by Nonveterinarian Void for Illegal Purpose: Employment contracts entered into in 1980 by an embryonics corporation and two persons who were not veterinarians, for the performance of bovine embryo transfers in Montana, were contracts for the illegal purpose of unauthorized practice of veterinary medicine and were therefore void. Actions arising from alleged breach of the contracts were unenforceable. Portable Embryonics, Inc. v. J.P. Genetics, Inc., 248 M 242, 810 P2d 1197, 48 St. Rep. 415 (1991).

Part 2
Board of Veterinary Medicine

Part Administrative Rules

Title 24, chapter 225, subchapter 1, ARM Organizational rule.

Title 24, chapter 225, subchapter 2, ARM Procedural rules.

37-18-201. Organization — meetings.

Compiler's Comments

2001 Amendment: Chapter 492 in (2) substituted second sentence regarding absence from meetings for "At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant"; and made minor changes in style. Amendment effective October 1, 2001.

37-18-202. Rulemaking.

Compiler's Comments

2005 Amendment: Chapter 467 at beginning after "rules" deleted "and orders" and after "necessary" substituted "to carry out the purposes of this chapter" for "for the performance of its duties, including but not limited to:

(a) prescribing of forms for application for examination and license;

(b) preparation of examinations; and

(c) clarifying the use of support personnel and the provision of emergency services.

(2) The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 75 inserted (1)(c) concerning support personnel and emergency services.

1997 Statement of Intent: The statement of intent attached to Ch. 75, L. 1997, provided: "A statement of intent is required for this bill because 37-18-104(6) and (7) and 37-18-202(1)(c) grant authority to the board of veterinary medicine to adopt rules regarding the limited exemption of certain veterinary support personnel from the practice of veterinary medicine. It is intended that the board be allowed to define by rule the scope of treatments that support personnel may render when working under the supervision of a veterinarian. It is also intended that, in its discretion, the board be allowed to further define situations that constitute emergencies during which support personnel may provide limited care to a veterinarian's animal patients."

1995 Amendment: Chapter 429 deleted (1)(a) authorizing Board to adopt rules for development of continuing professional education requirements and exceptions from requirements; deleted (3) that read: "(3) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1989 Amendment: In introductory clause of (1), after "duties", inserted "including but not limited to"; inserted (1)(a) regarding continuing education; and made minor changes in phraseology, form, and punctuation. Amendment effective May 11, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 650, L. 1989, provided: "A statement of intent is required for this bill because 37-18-104, 37-18-202, and 37-18-311 [now repealed] grant to the board of veterinary medicine the authority to adopt rules to implement the provisions of the bill. At a minimum, it is intended that the rules address:

(1) a definition of accepted livestock management practices in order to determine whether a person who advises on the subject is exempt from Title 37, chapter 18;

(2) development of standards for continuing education requirements, which may be supplemental to present board rules on the subject;

(3) a definition of unprofessional conduct to be used in determining whether a license may be refused, suspended, or revoked;

(4) certification of individuals seeking to practice embryo transfers, to be implemented on or before July 1, 1991; and

(5) formation of an advisory committee to make recommendations regarding the certification of individuals seeking to practice embryo transfers."

1981 Amendment: Deleted former subsection (2), relating to issuance of veterinary technicians' licenses.

Administrative Rules

Title 24, chapter 225, ARM Board of Veterinary Medicine.

Part 3
Licensing — Veterinary Medicine

37-18-301. License required.

Administrative Rules

ARM 24.225.425 Nonroutine applications.

37-18-302. Application — qualification.

Compiler's Comments

2009 Amendment: Chapter 109 deleted former last sentence that read: "A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set by the board". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1999 Amendment: Chapter 230 in third sentence substituted "certified transcript" for "photostatic copy of the diploma"; in fourth sentence substituted "certified transcript" for "photostatic copy"; and made minor changes in style. Amendment effective October 1, 1999.

1991 Amendment: In last sentence, after "set", deleted "annually". Amendment effective February 12, 1991.

1981 Amendment: Substituted "person" for "citizen of the United States" at the beginning of the section.

Citizenship Qualification — Preamble: The preamble to Ch. 341, L. 1981, provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Administrative Rules

ARM 24.225.401 Fee schedule.
ARM 24.225.503 Examination application requirements.
ARM 24.225.504 Examination for licensure.
ARM 24.225.507 Licensure endorsement of out-of-state applicants.

37-18-305. License — issuance and contents.

Compiler's Comments

1995 Amendment: Chapter 429 in (1), after "investigation", deleted "under the reciprocity arrangements of 37-18-304"; in (2), after "examination", deleted "or investigation under reciprocity arrangements"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

37-18-306. Display of license and certificate.

Compiler's Comments

2007 Amendment: Chapter 502 near middle after "office" deleted "a license and" and after "valid" substituted "license" for "certificate of registration"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

37-18-308. Deposit of money.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-18-309. Supervision of licensed veterinary technician — failure to comply.

Compiler's Comments

Effective Date: Section 11, Ch. 392, L. 2021, provided: "[This act] is effective January 1, 2023."

37-18-313. Municipal license fee prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: Section 10, Ch. 650, L. 1989, provided that this section is effective May 11, 1989.

Part 6
Euthanasia Technicians and Agencies — Certification

Part Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 153, L. 2007, repealed sec. 11, Ch. 60, L. 2003, which terminated this part January 1, 2008.

Effective Date: Section 10, Ch. 60, L. 2003, provided: "[This act] is effective January 1, 2004."

Termination: Section 11, Ch. 60, L. 2003, provided: "[This act] terminates January 1, 2008."

37-18-603. Powers of board — euthanasia certification.

Administrative Rules

ARM 24.225.401 Fee schedule.

Title 24, chapter 225, subchapter 9, ARM Euthanasia technicians and agencies.

Part 7
Licensing — Veterinary Technician

37-18-701. License required for veterinary technicians — requirements — license renewal — use of initials or terms.

Compiler's Comments

Effective Date: Section 11, Ch. 392, L. 2021, provided: "[This act] is effective January 1, 2023."

37-18-702. Licensed veterinary technician scope of practice.

Compiler's Comments

Effective Date: Section 11, Ch. 392, L. 2021, provided: "[This act] is effective January 1, 2023."

Part 8
Licensing — Veterinary Retail Facility — Veterinary Dispensing Technician

Part Compiler's Comments

Effective Date: Section 13, Ch. 759, L. 2023, provided: "[This act] is effective July 1, 2023."

37-18-801. Definitions.

Compiler's Comments

2023 Code Commissioner Correction: In introductory clause, the Code Commissioner substituted "this part" for "[subsections 1 through 8]" to correct an erroneous reference. The reference to "this part" indicates the complete group of sections codified as new Title 37, chapter 18, part 8.

37-18-802. Exemptions.

Compiler's Comments

2023 Code Commissioner Correction: Near beginning, the Code Commissioner substituted "this part" for "[subsections 1 through 8]" to correct an erroneous reference. The reference to "this part" indicates the complete group of sections codified as new Title 37, chapter 18, part 8.

37-18-807. Penalties for violations.

Compiler's Comments

2023 Code Commissioner Correction: The Code Commissioner in three places substituted "this part" for "[subsections 1 through 8]" to correct an erroneous reference. The reference to "this part" indicates the complete group of sections codified as new Title 37, chapter 18, part 8.

CHAPTER 19
MORTICIANS AND FUNERAL SERVICES

Chapter Administrative Rules

Title 24, chapter 147, ARM Board of Funeral Service.

Part 1
General

37-19-101. Definitions.

Compiler's Comments

2019 Amendment: Chapter 49 in definition of preneed arrangements before "licensed mortician" deleted reference to licensed funeral director; and made minor changes in style. Amendment effective October 1, 2019.

2009 Amendment: Chapter 208 in definition of authorizing agent in second sentence after "preference" inserted "for an authorizing agent is subject to the priority of rights of disposition established in 37-19-904" and deleted former (a) through (e) that read: "(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule"; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 126 in definition of arrangements in (b) at end after "certificates" deleted "and obtaining burial-transit permits". Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1999 Amendment: Chapter 336 inserted definitions of arrangements, at-need, branch establishment, intern, and preneed arrangements; in definition of authorizing agent after "order" substituted "the final disposition, including burial, cremation, entombment, donation to medical science, or other means" for "the cremation"; substituted definition of embalming for former language that read: "means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both"; substituted definition of mortuary for former language that read: "means the place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents that the person is engaged in the profession of mortuary science or funeral directing"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 52 inserted definitions of cemetery, cemetery company, columbarium, crypt, interment, lot or grave space, mausoleum, niche, and perpetual care and maintenance; and made minor changes in style.

1993 Amendment: Chapter 38 inserted definitions of authorizing agent, closed container, cremated remains, cremation, cremation chamber, cremation container, crematory, crematory operator, crematory technician, holding facility, human remains, temporary container, and urn, in definition of Board substituted "funeral service" for "morticians", and at end of definition of funeral directing deleted "or undertaker"; and made minor changes in style. Amendment effective February 10, 1993.

1989 Amendment: In (4)(a) inserted "including the making of preneed or at-need contractual arrangements for funerals". Amendment effective March 24, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 298, L. 1989, provided: "A statement of intent is required for this bill because it grants authority to the board of morticians to adopt rules for:

(1) the imposition of fines in disciplinary actions for unprofessional conduct. Fines may be levied for any conduct for which a mortician's or funeral director's license could be revoked or suspended.

(2) the setting of standards for operating mortuary facilities to assure adherence to sanitary and safety provisions;

(3) the collection of fees and charges for mortuaries, which fees or charges must be commensurate with costs incurred for the services; and

(4) the establishment of reasonable application forms for operation of a new mortuary and transfer fees required to allow the transfer of a license to a new facility."

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Administrative Rules

ARM 24.147.302 Funeral service definitions.

Part 2

Board of Funeral Service

Part Administrative Rules

Title 24, chapter 147, subchapter 1, ARM Organizational rule.

Title 24, chapter 147, subchapter 2, ARM Procedural rules.

37-19-201. Organization — compensation and expenses of members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1981 Amendment: Substituted the second sentence providing that Board members are entitled to compensation and travel expenses as provided in 37-1-133 for "Board members may serve for a compensation of $25 per day for attending board meetings and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, connected with attending meetings or in the discharge of other board duties".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-19-202. Meetings — rulemaking power.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former second sentence that read: "Three members constitute a quorum for the transaction of business"; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

Title 24, chapter 147, ARM Board of Funeral Service.

37-19-204. Special revenue account — use of funds — reporting requirement.

Compiler's Comments

Effective Date: Section 5, Ch. 160, L. 2021, provided: "[This act] is effective July 1, 2021."

Part 3

Licensing of Morticians

Part Administrative Rules

Title 24, chapter 147, subchapter 4, ARM Substantive rules.

Title 24, chapter 147, subchapter 5, ARM Licensing.

Title 24, chapter 147, subchapter 9, ARM Mortuary requirements.

Title 24, chapter 147, subchapter 13, ARM Cemetery regulation rules.

Title 24, chapter 147, subchapter 21, ARM Continuing education rules.

Title 24, chapter 147, subchapter 23, ARM Unprofessional conduct.

37-19-302. License required for practice of mortuary science — qualifications of applicants.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 355, L. 2023. Amendment effective July 1, 2023.

Severability: Section 3, Ch. 355, L. 2023, was a severability clause.

2019 Amendments — Composite Section: Chapter 46 deleted former (2)(c) that read: "(c) have earned in subjects prescribed by the board an additional 30 semester or 45 quarter credits from an accredited college or university that have not been applied toward the requirements in subsection (2)(b)"; and made minor changes in style. Amendment effective March 7, 2019.

Chapter 49 in (1) substituted current text restricting the practice of mortuary science for former text that read: "The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited"; in (3)(c) after "prescribed by the board" inserted "and pay the application fee set by the board by rule"; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 34 in (2)(b) substituted current text concerning associate degree for "present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university"; and in (2)(c) substituted current text concerning additional credits for "in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science". Amendment effective October 1, 2015.

2003 Amendment: Chapter 224 in (1)(e) after "mortuary" deleted "in Montana". Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1985 Amendment: In first sentence of (1) substituted "board" for "department", and inserted last sentence of (1) requiring person 18 or older to apply; at beginning of (2)(b) substituted "present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study" for "have graduated from an accredited college of mortuary science and have satisfactorily completed 2 academic years" and at end of (2)(b) deleted "or have experience considered equivalent by the board"; inserted (2)(c) requiring an applicant to have graduated from an accredited college of mortuary science; in (2)(e) before "mortician" inserted "licensed" and at end inserted "after passing the examination provided for in subsection (2)(d)"; and inserted (3) allowing applicant who fails examination to retake it.

Severability: Section 5, Ch. 510, L. 1985, was a severability section.

Statement of Intent: The statement of intent attached to Ch. 510, L. 1985, provided: "It is the intent of the legislature by this bill that the board of morticians be delegated authority to adopt rules to:

(1) determine under what conditions unsuccessful applicants for licenses to practice mortuary science may retake the appropriate examination;

(2) grant special consideration as to recognition of internship qualifications in hardship cases; and

(3) define "unprofessional conduct" for license disciplinary purposes."

1981 Amendment: Added "or have experience considered equivalent by the board" at the end of (2).

Administrative Rules

ARM 24.147.507 Mortician licenses.

ARM 24.147.509 Examinations.

37-19-303. Mortician's license —renewals — fees.

Compiler's Comments

2019 Amendment: Chapter 49 substituted current text concerning renewal of mortician's license for former text that read: "A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board." Amendment effective October 1, 2019.

2003 Amendment: Chapter 224 deleted former second sentence that read: "The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary." Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1981 Amendment: Deleted "but not to exceed $75" after "fee, as set by the board" in the middle of the first sentence.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.147.401 Fee schedule.
ARM 24.147.507 Mortician licenses.
ARM 24.147.509 Examinations.

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 355, L. 2023. Amendment effective July 1, 2023.

Severability: Section 3, Ch. 355, L. 2023, was a severability clause.

1997 Amendment: Chapter 492 near end, after "payment of the", deleted "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1985 Amendment: Near beginning of section, after "examination", inserted "provided for in 37-19-302"; before "mortician" inserted "licensed".

Severability: Section 5, Ch. 510, L. 1985, was a severability section.

1981 Amendment: Substituted "a license fee prescribed by the board" for "a license fee of $3" near the beginning of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.147.401 Fee schedule.
ARM 24.147.504 Internship.

37-19-308. Student exemption — rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

37-19-315. Funeral costs — rules on disclosure.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 398 (Ch. 378, L. 1981) provided: "A Statement of Intent is required for this bill because it delegates rulemaking authority to the Board of Morticians in sections 7 and 8.

It is the intent of this bill that the board adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming. Members of the public seeking the services of mortuaries are usually under a great deal of personal stress, and the rules adopted are intended to provide complete disclosure of costs and attendant legal requirements to protect the economic interest of members of the public.

This bill grants the board the authority to establish continuing education programs and requirements to insure maintenance of professional knowledge and competency of licensees. It is the intent of the Legislature that the continuing education programs have as their primary objective the protection of the health, safety, and welfare of the public, and that the programs not serve primarily to limit entry into the profession or occupation or to promote the personal interests of the licensees."

Administrative Rules

Title 24, chapter 147, subchapter 9, ARM Mortuary requirements.

Part 4
Licensing of Mortuaries

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 298, L. 1989, provided: "A statement of intent is required for this bill because it grants authority to the board of morticians to adopt rules for:

(1) the imposition of fines in disciplinary actions for unprofessional conduct. Fines may be levied for any conduct for which a mortician's or funeral director's license could be revoked or suspended.

(2) the setting of standards for operating mortuary facilities to assure adherence to sanitary and safety provisions;

(3) the collection of fees and charges for mortuaries, which fees or charges must be commensurate with costs incurred for the services; and

(4) the establishment of reasonable application forms for operation of a new mortuary and transfer fees required to allow the transfer of a license to a new facility."

37-19-401. License required — display of license.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (2) and (3) that read: "(2) A mortuary license expires on the date set by department rule and may be renewed upon payment of a fee set by the board.

(3) The board may set a penalty for late renewal of a mortuary license"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in (2), after "expires", substituted "on the date set by department rule" for "on June 30 of each year".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1989 Amendment: Inserted (2) providing for a license expiration date and a renewal fee; and inserted (3) allowing a late renewal penalty. Amendment effective March 24, 1989.

37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility.

Compiler's Comments

2019 Amendment: Chapter 49 in (1) and (4) substituted references to mortician's license for references to mortician's or funeral director's license; and made minor changes in style. Amendment effective October 1, 2019.

1989 Amendment: Inserted (2) through (4) relating to licensure of new mortuary facilities; inserted (5) allowing temporary licensure pending inspection; inserted (6) regarding transfer of a mortuary license; and inserted (7) relating to mortuary inspection during business hours. Amendment effective March 24, 1989.

Administrative Rules

ARM 24.147.401 Fee schedule.

ARM 24.147.407 Name change, closure, transfer, or sale — mortuary, branch establishment, crematory, or cemetery.

37-19-403. Power of board to set facility standards — inspection — fees.

Compiler's Comments

1989 Amendment: At end of (1) inserted "An initial inspection is mandatory"; in (2), after "inspection fee", inserted "including an initial inspection fee" and at end inserted "Fees must be commensurate with costs"; and made minor changes in phraseology. Amendment effective March 24, 1989.

1981 Amendment: Deleted "but not to exceed $25 per year" after "fee to be set at the discretion of the board" at the end of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.147.401 Fee schedule.

ARM 24.147.403 Inspections.

Title 24, chapter 147, subchapter 9, ARM Mortuary requirements.

Part 7

Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

Part Compiler's Comments

Effective Date: Section 25, Ch. 38, L. 1993, provided: "[This act] [37-19-701 through 37-19-708] is effective on passage and approval." Approved February 10, 1993.

Part Administrative Rules

Title 24, chapter 147, subchapter 11, ARM Crematory rules.

37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at end of first sentence after "board" deleted "beginning July 1, 1993"; deleted former (3) that read: "(3) The board may set a penalty fee for late renewal of a license"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in first sentence of (2) and (5) substituted "on the date set by department rule" for "on June 30 of each year".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Administrative Rules

ARM 24.147.1114 Licensure as crematory operator.

ARM 24.147.1115 Licensure as crematory technician.

37-19-703. Application — power of board to set standards — inspection — fees.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 38, L. 1993, provided: "A statement of intent is required for this bill because [sections 4 through 10] [Title 37, ch. 19, part 7] grant rulemaking authority to the board of funeral service to implement provisions of this bill. It is the intent of the legislature that the board, at a minimum, adopt rules:

(1) establishing license application procedures, license fees, criteria for minimum requirements for license eligibility, and requirements for license renewal;

(2) developing procedures for the issuance, renewal, suspension, and revocation of licenses; and

(3) creating disciplinary standards for licensees, establishing investigatory procedures for processing complaints, and adopting ethical standards for licensed crematory operators."

Part 8
Perpetually Maintained Cemeteries — Trusts

37-19-801. Short title.

Compiler's Comments

2019 Amendment: Chapter 49 substituted "Perpetually Maintained Cemeteries and Funeral and Cemetery Trusts Act" for "Perpetually Maintained Cemeteries Act." Amendment effective October 1, 2019.

37-19-802. Purpose.

Compiler's Comments

2019 Amendment: Chapter 49 after "trusts" inserted "including the protection of money held in trust for prearranged funeral or related services"; and made minor changes in style. Amendment effective October 1, 2019.

37-19-803. Application of this part — exceptions.

Compiler's Comments

2019 Amendment: Chapter 49 inserted (1)(b) concerning trust funds; inserted (2) concerning nonapplicability of part; and made minor changes in style. Amendment effective October 1, 2019.

37-19-807. Powers and duties of board — rulemaking.

Compiler's Comments

2019 Amendment: Chapter 49 in (1) through (3) substituted current text concerning examinations of a cemetery, cemetery company, mortuary, branch establishment, or crematory for former text that read: "The board is charged with administering this part. The board may:

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person designated by the board"; in (5) after "cemetery company" inserted "a mortuary, a branch establishment, or a crematory"; and made minor changes in style. Amendment effective October 1, 2019.

2005 Amendment: Chapter 467 in (3) after "rules" deleted "and forms"; and made minor changes in style. Amendment effective July 1, 2005.

37-19-808. Inspection of cemeteries and audit of cemetery companies.

Compiler's Comments

2019 Amendment: Chapter 49 in (1) deleted former first sentence that read: "The board may order an inspection of a cemetery or may audit a cemetery company", in first sentence near middle after "audited" inserted "as provided in 37-19-807 and", and in second sentence near beginning after "examination" inserted "or inspection"; in (2)(b) at beginning deleted "The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company" and in middle after "audit" inserted "allowed under subsection (2)(a)"; and made minor changes in style. Amendment effective October 1, 2019.

37-19-823. Records required.

Compiler's Comments

2019 Amendment: Chapter 49 inserted (3) concerning records requirements for a mortuary, branch establishment, or crematory; and made minor changes in style. Amendment effective October 1, 2019.

37-19-824. Conveyance.

Compiler's Comments

1999 Amendment: Chapter 336 near beginning in (1) and twice in (4) after "conveyance" deleted "or deed"; at end of (3)(a) after "conveyance" deleted "and deeds"; inserted (3)(b) requiring conveyance instrument to be recorded and returned to purchaser; and made minor changes in style. Amendment effective October 1, 1999.

37-19-827. Contract for prearranged funeral plan or related services — trust requirement — interest — exception.

Compiler's Comments

2019 Amendment: Chapter 49 in (1) before "licensed mortician" deleted "licensed funeral director or"; in (2) near end of introductory clause substituted "a mortuary, a branch establishment, a crematory" for "a funeral director, embalmer"; in (2)(b) at beginning inserted "terminated"; in (3) near end after "agreement" inserted "and the rules of the board"; inserted (4) allowing the board to require a mortuary, branch establishment, or crematory to provide an accounting or audit of the funds held in trust; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 1999.

Administrative Rules

Title 24, chapter 147, subchapter 15, ARM Branch facilities and prearranged funeral agreements.

37-19-828. Funeral trust fund — deposit of money.

Compiler's Comments

2015 Amendment: Chapter 125 in (1)(a) substituted "10 business days" for "3 business days"; in (1)(b) substituted "maintain an office" for "have its principal place of business" and after "of this state" inserted "of another state"; and made minor changes in style. Amendment effective October 1, 2015.

Effective Date: This section is effective October 1, 1999.

Attorney General's Opinions

Money Allocated to Casket to Be Held in Trust: All money paid under a prearranged funeral plan contract, including money allocated to a casket that under the contract may be delivered at the seller's option prior to the time its use is required, must be held in trust as provided in 72-27-201 (renumbered 72-37-101 and repealed and replaced by this section). 37 A.G. Op. 178 (1978).

Payment for Burial Vault to Be Held in Trust: A person engaged in selling burial vaults comes within the provisions of 72-27-201 (renumbered 72-37-101 and repealed and replaced by this section) requiring that money received under funeral plans be placed in trust until the obligation is fulfilled according to its terms or the money is refunded to the proper party. 27 A.G. Op. 3 (1957).

37-19-829. Report of entity holding deposited money.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Part 9
Right of Disposition of Remains

Part Compiler's Comments

Effective Date: This part is effective October 1, 2009.

37-19-904. Priority of rights of disposition.

Compiler's Comments

2011 Amendment: Chapter 158 inserted (2)(a) regarding disposition of remains by department of defense form 93; and made minor changes in style. Amendment effective October 1, 2011.

Retroactive Applicability: Section 2, Ch. 158, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to individuals who executed a department of defense form 93 before October 1, 2011."

CHAPTER 20
PHYSICIAN ASSISTANTS

Chapter Compiler's Comments

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

Part 1
General

37-20-103. Limitations on authority conferred — exception.

Compiler's Comments

2005 Amendment: Chapter 519 in two places substituted "physician assistant" for "physician assistant-certified" and in second sentence after "may" deleted "not". Amendment effective October 1, 2005.

1995 Amendment: Chapter 321 inserted second sentence prohibiting a physician assistant-certified from performing abortions.

1989 Amendment: Substituted "physician assistant-certified" for "physician's assistant".

Case Notes

Prohibition Against Abortion by Physician Assistant-Certified Unconstitutional Violation of Right of Privacy: After the decision in Mazurek v. Armstrong, 520 US 968, 138 L Ed 2d 162, 117 S Ct 1865 (1997), ibid., Dr. Armstrong and Cahill, a physician assistant-certified (see 2005 amendment), filed this case in state District Court challenging the constitutionality of 50-20-109 and this section, which prohibited a physician assistant-certified (see 2005 amendment) from performing abortions. The District Court found that the prohibition affected a woman's right to obtain a legal first trimester abortion and that the state had advanced no compelling interest to justify prohibiting Cahill from performing abortions, as she had for 20 years, and granted plaintiffs' motion for a preliminary injunction. Noting that Montana adheres to one of the most stringent protections of its citizens' right of privacy in the United States, exceeding even the federal constitution, the Supreme Court affirmed, holding that legislation that infringes on the exercise of the right of privacy must be reviewed under a strict scrutiny analysis. Under Art. II, sec. 10, Mont. Const., every individual is guaranteed the right to make medical judgments affecting that person's bodily integrity and health, in partnership with a chosen health care provider and free from government interference, except in very limited circumstances not at issue here. The court agreed that the statutory restrictions in question impacted a woman's right to procreative autonomy and her right to seek and obtain a specific lawful medical procedure from the health care provider of her choice, in this case a previability abortion from a physician assistant-certified, and were thus an unconstitutional violation of the right of privacy. Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999), following Gryczan v. St., 283 M 433, 942 P2d 112, 54 St. Rep. 699 (1997). See also Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), Planned Parenthood of Missoula v. St. (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II. sec. 10, Mont. Const.), and Weems v. St., 2019 MT 98, 395 Mont. 350, 440 P.3d 4.

Standing of Health Care Providers to Litigate Privacy Right of Patient to Obtain Previability Abortion: In a case of first impression, the Supreme Court relied on federal law to decide that the statutes directed at health care providers in 50-20-109 and this section, which prohibit a physician assistant-certified (see 2005 amendment) from performing abortions, interfered with the normal functioning of the physician-patient relationship by criminalizing certain procedures. To establish standing to challenge government action: (1) the complaining party must clearly allege past, present, or threatened injury to a property right or civil right; and (2) the alleged injury must be distinguishable from the injury to the public generally but need not be exclusive to the complaining party. In this case, based on the closeness of the physician-patient relationship, the health care providers had standing, on behalf of their women patients, to assert the women's constitutional privacy right under Art. II, sec. 10, Mont. Const., to obtain a previability abortion from the health care provider of their choosing. Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999), following Singleton v. Wulff, 428 US 106, 49 L Ed 2d 826, 96 S Ct 2868 (1976). See also Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), Planned Parenthood of Missoula v. St. (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II. sec. 10, Mont. Const.), and Weems v. St., 2019 MT 98, 395 Mont. 350, 440 P.3d 4.

Part 2
Board of Medical Examiners

Part Administrative Rules

Title 24, chapter 156, subchapter 1, ARM Organizational rule.

Title 24, chapter 156, subchapter 2, ARM Procedural rules.

37-20-202. Adoption of rules.

Compiler's Comments

2005 Amendment: Chapter 519 near beginning substituted "board may adopt" for "board of medical examiners shall adopt"; deleted former (1) through (5) that read: "(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless the physician is able to demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public;

(5) address physician assistant training in Montana"; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 inserted (6) requiring Board to adopt rules containing grounds for disciplinary action; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: Inserted (5) concerning physician assistant training. Amendment effective April 16, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 446, L. 1991, provided: "A statement of intent is necessary for this bill because 37-20-202(5) requires the board of medical examiners to develop rules pertinent to the training of physician assistant students in Montana. It is intended that the rules address the kind and amount of supervision required for physician assistant students and other aspects of student training the board considers pertinent."

1989 Amendment: In (3) substituted "physician assistant-certified" for "physician's assistant"; and in (4) substituted "physician assistant-certified" for "physicians' assistants" and inserted "and locum tenens utilization plans". Amendment effective March 15, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 97, L. 1989, provided: "A statement of intent is required for this bill because [sections 4 and 13] [37-20-404 and 37-20-202] grant or extend rulemaking authority to the board of medical examiners in order to implement the provisions of this bill.

At a minimum, it is intended that the rules address the following topics:

(1) authorization for prescribing, dispensing, and administering drugs by a physician assistant-certified, including the extent and limitations of the prescribing and dispensing authority, required recordkeeping, and refilling of prescriptions; and

(2) considerations pertinent to approval of locum tenens utilization plans."

1981 Statement of Intent: The statement of intent attached to HB 7 (Ch. 380, L. 1981) provided: "A statement of intent is required for this bill because it delegates authority to the board of medical examiners to consider physicians' assistants utilization plans and to promulgate administrative rules in that regard.

HB 7 intends that the board of medical examiners carry out the provisions of this bill and act to provide better health care for the public. In this spirit, the bill intends for the board of medical examiners to adopt rules which will clarify the nature and limitations of the supervision of physicians' assistants by physicians. The rules adopted should address issues of direction and supervision such as proximity of the supervising physician to his assistant; the nature of the communication between the physician and the assistant, whether it must be face-to-face or whether telephone communications suffice, and under what circumstances; the questions of protocols for interaction between different health care actors, including issues of liability and the possible direction of others by physicians' assistants; and the rules adopted should give additional guidance to prospective applicants with respect to the requirements for education and experience required of physicians' assistants, the nature of a training program approved by the American medical association, and general information indicating the scope of utilization plans likely to be approved.

In addition, a rule shall be promulgated to specify that a physician may not utilize more than one physician's assistant unless he can demonstrate to the board the ability to supervise more than one assistant adequately."

37-20-203. Licensing of physician assistants — collaborative agreements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 88, L. 2023. Amendment effective April 18, 2023.

2005 Amendment: Chapter 519 substituted "board may issue either an active or inactive license to a physician assistant applying for a license or license renewal in Montana" for "Montana state board of medical examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) a permanent license, signed by the president and subject to periodic renewal; and

(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board"; and made minor changes in style. Amendment effective October 1, 2005.

1997 Amendment: Chapter 492 in (1), near end, substituted "periodic" for "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

Effective Date: Section 18, Ch. 419, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 20, 1993.

Part 3
Supervision Agreements

37-20-301. Requirements for physician assistant practice.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 88, L. 2023. Amendment effective April 18, 2023.

2005 Amendments — Composite Section: Chapter 467 in (4) near end after "37-20-302" deleted "(1)"; and made minor changes in style. Amendment effective July 1, 2005. The amendment by Ch. 519 rendered the amendment by Ch. 467 void.

Chapter 519 in (1) throughout subsection substituted "physician assistant" for "physician assistant-certified"; near middle of introductory clause after "37-3-102, and" inserted "as provided in this chapter"; in (1)(c) near beginning substituted "submitted" for "received board approval" and at end substituted "supervision agreement to the board on a form prescribed by the department" for "utilization plan"; inserted (1)(d) requiring payment of applicable fees; deleted former (2) through (5) that read: "(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and license number of the physician assistant-certified;

(b) the nature and location of the physician's medical practice;

(c) the scope of practice of the physician assistant-certified and the locations where the physician assistant-certified will practice;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to act as an alternate supervising physician in the absence of the primary supervising physician;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the practice of the physician assistant-certified is:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member"; inserted (2) and (3) relating to supervision agreement requirements and requirement for providing a copy; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 in (1)(b), at beginning, substituted "is licensed" for "has been approved"; in (2)(a) substituted "license" for "approval"; in (2)(c), at beginning, substituted "scope of practice of" for "duties to be delegated to" and at end substituted "locations where the physician assistant-certified will practice" for "location in which those duties are to be performed"; in (2)(d), after "37-20-101 to", substituted "act as an alternate" for "serve in the place of" and at end substituted "absence of the primary supervising physician" for "event that the supervising physician is unable to supervise the physician assistant-certified temporarily"; in (3) substituted "practice of" for "duties to be delegated to"; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: In (5), at end of first sentence after "practice", deleted "for a period not to exceed 30 calendar days". Amendment effective April 16, 1991.

1989 Amendment: Throughout section changed "physician's assistant" to "physician assistant-certified"; in (1)(a), after "physician", deleted "and unless such employment or use"; at beginning of (1)(c) inserted "has received board approval of a"; in (2)(a) inserted reference to name and approval number of the physician assistant-certified; inserted (2)(e) relating to availability for consultation; inserted (2)(f) regarding other information the Board may consider necessary; inserted (4) regarding submission of new or additional plan; inserted (5) relating to locum tenens utilization plans; and made minor changes in arrangement and phraseology.

37-20-302. Application for and renewal of license — fees.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 467 at beginning after "plan" inserted "must be submitted" (amendment rendered void by Ch. 519 amendment); deleted former (2) through (7) that read: "(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department of labor and industry.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department of labor and industry shall mail a renewal notice prior to the renewal date.

(6) Except as provided in 37-1-138, if the license renewal fee is not paid on or before the renewal date, the board may consider the license lapsed.

(7) Fees received by the department of labor and industry must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 519 deleted former (1) through (6) that read: "(1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department of labor and industry.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department of labor and industry shall mail a renewal notice prior to the renewal date.

(6) Except as provided in 37-1-138, if the license renewal fee is not paid on or before the renewal date, the board may consider the license lapsed"; inserted (1) relating to submission of an application to practice; inserted (2) relating to license renewal; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 224 in three places after "department" inserted "of labor and industry"; in (5) after "notice" deleted "no later than 60 days" and deleted former second sentence that read: "A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the license"; and in (6) after "may" substituted "consider" for "revoke" and after "license" substituted "lapsed" for "after giving 30 days' notice to the licensee" and deleted former second sentence that read: "A license may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation." Amendment effective July 1, 2003.

Chapter 271 in (6) at beginning of first sentence inserted "Except as provided in 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 492 in (3) substituted "for a period and" for "annually"; and in (6), in first sentence near beginning, substituted "license renewal" for "annual renewal" and in second sentence, after "if the licensee pays the", deleted "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 at end of (3) substituted "department" for "board"; and in first sentences of (5) and (6), after "date", deleted "set by the board under subsection (3)".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 419 throughout section substituted references to license for references to certificate and references to licensee for references to certificate holder; in (1), at beginning, deleted "Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified shall pay to the board" and after "fee" inserted "must be paid"; and substituted (2) requiring a locum tenens utilization plan approval fee for "Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified on a locum tenens basis shall pay to the board a locum tenens utilization plan fee in an amount set by the board." Amendment effective April 20, 1993.

1991 Amendment: In (1), at end of first sentence after "board", deleted "not exceeding $50"; deleted former (2) concerning approval of a utilization plan and notification by Department of Commerce of expiration of Board approval of utilization plan 1 month prior to expiration; deleted former (3) concerning Board renewal of approval of utilization plan under circumstances justifying original approval and payment of fee; in (2), at end after "board", deleted "not to exceed $50"; inserted (3) concerning annual renewal of certificate on date set by Board; inserted (4) concerning certificate renewal fee set by Board and payable when certificate renewed; inserted (5) concerning Department sending renewal notice no later than 60 days before renewal date set by Board and certified letter to delinquent certificate holder's last-known address constituting notice of intent to revoke certificate; and inserted (6) concerning Board's ability to revoke certificate for nonpayment of renewal fee upon giving 30 days' notice unless fee plus penalty set by Board is paid on or before date set for revocation.

1989 Amendment: Throughout section changed "physician's assistant" to "physician assistant-certified"; and inserted (4) regarding locum tenens utilization plan fee.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment — Transfer of Function: As enacted, subsection (2) referred to "the department of professional and occupational licensing". The code commissioner changed that reference to "the department of commerce" as required by sec. 3, Ch. 274, L. 1981.

37-20-303. Exemptions from licensure requirement.

Compiler's Comments

2019 Amendment: Chapter 220 in (1)(g) substituted "emergency care provider" for "emergency medical technician". Amendment effective July 1, 2019.

2005 Amendment: Chapter 519 deleted "This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapter 3, 4, 6 through 17, or 31"; inserted (1) listing scope of services not required to be licensed under chapter; and inserted (2) restricting use of PA and PA-C titles or abbreviations. Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 224 near end after "chapters 3" deleted reference to chapter 5; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 243 at end deleted reference to chapter 32. Amendment effective October 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Section 25, Ch. 243, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1989 Amendment: Near beginning substituted "physician assistant-certified" for "physician's assistant" and inserted "or locum tenens utilization plan".

Part 4
Regulation of Practice

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 97, L. 1989, provided: "A statement of intent is required for this bill because [sections 4 and 13] [37-20-404 and 37-20-202] grant or extend rulemaking authority to the board of medical examiners in order to implement the provisions of this bill.

At a minimum, it is intended that the rules address the following topics:

(1) authorization for prescribing, dispensing, and administering drugs by a physician assistant-certified, including the extent and limitations of the prescribing and dispensing authority, required recordkeeping, and refilling of prescriptions; and

(2) considerations pertinent to approval of locum tenens utilization plans."

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

37-20-401. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 88, L. 2023. Amendment effective April 18, 2023.

2005 Amendment: Chapter 519 inserted definitions of duties and delegation agreement, supervising physician, and supervision agreement; deleted definition of locum tenens that read: ""Locum tenens" means the temporary provision of services within the scope of practice of a physician assistant-certified"; substituted physician assistant for physician assistant-certified as defined term, near beginning after "team" substituted "licensed" for "approved", near middle after "include" inserted "but are not limited to", and near end after "treatment" deleted "as approved by the board"; deleted definition of protocol that read: ""Protocol" means the proper relationship between a physician assistant-certified and other health care practitioners and the manner of their interaction"; and made minor changes in style. Amendment effective October 1, 2005.

37-20-402. Criteria for licensing physician assistant.

Compiler's Comments

2015 Amendment: Chapter 154 deleted former (4) that read: "(4) holds a current certificate from the national commission on the certification of physician assistants"; and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendment: Chapter 519 in introductory clause substituted "physician assistant" for "physician assistant-certified"; in (2) substituted "accredited by the accreditation review commission on education for the physician assistant or, if accreditation was granted before 2001, accredited by the American medical association's committee on allied health education and accreditation or the commission on accreditation of allied health education programs" for "approved by the American medical association's committee on allied health education and accreditation"; in (3) substituted "pass an examination administered" for "successfully passed an examination recognized"; deleted former (5) that read: "(5) has submitted to the board detailed information on the person's history, education, and experience"; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 in introductory clause, near beginning, substituted "licensed" for "approved"; and made minor changes in style. Amendment effective April 20, 1993.

37-20-403. Physician assistant scope of practice.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 88, L. 2023. Amendment effective April 18, 2023.

2005 Amendment: Chapter 519 in (1) at beginning of first sentence substituted "A physician assistant is" for "In establishing protocol, a physician assistant-certified must be" and at end substituted "physician assistant and is professionally and legally responsible for the care and treatment of a patient by a physician assistant licensed in accordance with this chapter" for "physician assistant-certified under the utilization plan" and in second sentence in two places substituted "physician assistant" for "physician assistant-certified" and at end deleted "under the utilization plan"; in (2) substituted "Onsite or direct supervision of a physician assistant by a supervising physician is not required if the supervising physician has provided a means of communication between the supervising physician and the physician assistant or an alternate means of supervision in the event of the supervising physician's absence" for "The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis"; inserted (3) setting forth scope of practice; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 429 deleted (3) that read: "(3) Nothing in this chapter may be construed to conflict with the provisions of 37-3-322."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

Case Notes

Blood Test Administered by EMT Supervised by Physician Assistant Under Instructions of Supervising Physician — Permissible Under DUI Statute: After the defendant was arrested and transported to jail, a search warrant was issued to draw blood and test for alcohol. An advanced emergency medical technician (EMT) drew blood and sent it to the state crime laboratory for testing. The defendant argued that because the EMT was under the supervision of only a physician assistant, rather than a physician or a registered nurse, the plain language of 61-8-405 (now repealed) was violated. The Supreme Court found that when 61-8-405 is read together with 37-20-403 and meaning is given to both statutes, a physician assistant who is under the supervision of a physician will meet the statutory requirements of 61-8-405, considering that the physician assistant acts as an agent of the supervising physician. St. v. Heath, 2018 MT 318, 394 Mont. 41, 432 P.3d 141.

37-20-404. Prescribing and dispensing authority.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 88, L. 2023. Amendment effective April 18, 2023.

2005 Amendment: Chapter 519 in (1) near beginning substituted "physician assistant" for "physician assistant-certified" and at end substituted "supervising physician" for "board by rule the utilization plan, or both" and deleted former second sentence that read: "The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician may impose additional limitations on the prescribing and dispensing authority granted by the board"; in (3) substituted "physician assistant" for "physician assistant-certified"; in (3)(d) at beginning substituted "physician assistant" for "physician assistant-certified" and at end inserted language relating to whether controlled substances may be prescribed; in (3)(e) substituted "physician assistant" for "physician assistant-certified"; deleted former (1)(f) that read: "(f) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 327 at end of (3)(b) substituted "not to exceed 34 days" for "not to exceed 72 hours".

1993 Amendment: Chapter 419 in (3)(b) increased prescribing, dispensing, and administration authority of physician assistant-certified from 48 hours to 72 hours; deleted former (3)(e) that read: "(e) Drugs dispensed by a physician assistant-certified must be prepackaged by a licensed pharmacist, except that samples provided by a pharmaceutical company representative may be dispensed"; and made minor changes in style. Amendment effective April 20, 1993.

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

37-20-405. Billing.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 88, L. 2023. Amendment effective April 18, 2023.

2005 Amendment: Chapter 519 inserted "a service provided by a supervised" and substituted "physician assistant" for "physician assistant-certified services". Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 after "physician" inserted "office, firm", after "institution" inserted "or other entity", and deleted "where services are delivered"; and made minor changes in style. Amendment effective April 20, 1993.

37-20-406. Liaison to board.

Compiler's Comments

2005 Amendment: Chapter 519 substituted "may appoint" for "shall elect". Amendment effective October 1, 2005.

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

37-20-410. Participation in disaster and emergency care — liability of physician assistant.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 88, L. 2023. Amendment effective April 18, 2023.

Effective Date: This section is effective October 1, 2005.

37-20-411. Unlawful acts.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 88, L. 2023. Amendment effective April 18, 2023.

Effective Date: This section is effective October 1, 2005.

CHAPTER 23
PROFESSIONAL COUNSELING

Part 1
General

Part Administrative Rules

Title 24, chapter 219, ARM Board of Behavioral Health.

37-23-104. Enactment — interstate counseling compact.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

CHAPTER 24
OCCUPATIONAL THERAPY

Chapter Administrative Rules

Title 24, chapter 165, ARM Board of Occupational Therapy Practice.

Part 1
General Provisions

37-24-103. Definitions.

Compiler's Comments

2003 Amendment: Chapter 101 in definition of certified occupational therapy assistant near end after "provisions of" substituted "the national board for certification in occupational therapy, inc." for "the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association"; in definition of occupational therapy substituted first two sentences concerning therapeutic use of purposeful goal-directed activities and limitations in daily life roles and restoration of performance abilities for former text that read: "means the use of purposeful activity and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment, or an adverse environmental condition. The practice encompasses assessment, treatment, and consultation" and in subsections enumerating interventions substituted (a) concerning activities of daily living for former text that read: "teaching daily living skills", in (d) after "applying" substituted "orthotic or prosthetic devices, applying and training in the use of assistive technology, and training in the use of orthotic and prosthetic devices" for "splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices", substituted (g) concerning adaptation of task, process or the environment for former text that read: "adapting environments for the disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning", in (k) at beginning substituted "application of" for "employing" and at end inserted "as an adjunct to or in preparation for engagement in purposeful goal-directed activity", inserted (m) concerning evaluating and providing intervention, inserted

(n) concerning education, inserted (o) concerning consultation, and inserted (p) concerning use of topical medications; inserted definition of occupational therapy assistant; in definition of physical agent modalities in last sentence before "elbow" inserted "shoulder, arm"; substituted purposeful goal-directed activity for purposeful activity as defined term; inserted definition of topical medications; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1993 Amendment: Chapter 297 inserted definitions of certified occupational therapy assistant, physical agent modalities, and purposeful activity; in definition of occupational therapy, near beginning of first sentence after "activity", substituted "and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of" for "with", after "dysfunction" inserted "mental illness", and at end, after "process", substituted "cognitive impairment, or an adverse environmental condition" for "in order to maximize independence, prevent disability, and maintain health", in second sentence, after "encompasses", substituted "assessment" for "evaluation", (in former temporary version deleted former third and fourth sentences that read: "Treatment includes the use of superficial heat and cold, including hot packs, cold packs, ice, paraffin, and water, applied to the elbow, forearm, and hand; vibration and brushing; treatment of oral motor conditions; and the use of therapeutic devices limited to the elbow, forearm, and hand that the board approves consistent with the basic education requirements for professional licensure under this chapter. Treatment is limited to procedures in preparation for or in conjunction with purposeful activity"), in fourth sentence substituted "Occupational therapy interventions" for "Specific occupational therapy services", in (c), after "skills", deleted "and prevocational" and at end inserted "and enhancing educational performance skills", substituted (e) regarding provision of performance components for former language that read: "using specifically designed crafts and exercises to enhance functional performance", substituted (f) regarding assessment and evaluation for former language that read: "administering and interpreting tests such as manual muscle and range of motion", at end of (g) substituted "disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning" for "handicapped", inserted (h) regarding feeding and swallowing skills, inserted (i) regarding work performance and work readiness, inserted (j) regarding neuromuscular facilitation and inhibition, inserted (k) regarding physical agent modalities, and inserted (l) regarding health promotion; deleted former definition of occupational therapy assistant that read: ""Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association, as it read on October 1, 1985"; and made minor changes in style. Amendment effective April 9, 1993.

1991 Amendment: In definition of occupational therapy inserted third and fourth sentences relating to scope and limitation of treatment. Amendment effective February 19, 1991.

Construction of Law: Section 2, Ch. 35, L. 1991, provided: "Nothing in [this act] may be construed to prohibit the use of therapeutic devices or equipment authorized as a specific occupational therapy service under 37-24-103(4)(d)." Effective February 19, 1991, and terminates July 1, 1993.

Effective Date — Termination: Section 3, Ch. 35, L. 1991, provided: "[This act] is effective on passage and approval [approved February 19, 1991] and terminates July 1, 1993."

Attorney General's Opinions

Occupational Therapist Not Authorized to Use Iontophoresis: Iontophoresis is a process that uses electricity to administer topical medication. The statutes governing the practice of physical therapy define topical medication and iontophoresis and authorize its use by physical therapists, but the statutes governing the practice of occupational therapy do not contain those definitions or authorize the use of topical medications, including medications administered through iontophoresis, by occupational therapists. If the Legislature had intended to authorize occupational therapists to use iontophoresis, it would have made an authorization corollary to the statutes governing physical therapists, but it did not. Therefore, occupational therapists are not authorized by Montana law to perform iontophoresis. 49 A.G. Op. 1 (2001).

Restriction on Use of Modalities by Occupational Therapists: While the list of permissible occupational services set out in this section is not exhaustive, allowable types of services involve functional activities, such as the development of skills, use of crafts, and administration of muscle and motion tests rather than application of therapeutic modalities, such as heat, cold, air, light, water, electricity, and sound. The use of therapeutic agents may be a viable part of the practice of occupational therapy, and occupational therapists may be fully trained in the employment of those agents; however, the Legislature has not authorized their use as within the scope of the practice (see 1993 amendment). 44 A.G. Op. 3 (1991).

37-24-104. Exemptions.

Compiler's Comments

2003 Amendment: Chapter 114 in (6)(b) at end substituted "national board for certification in occupational therapy, inc. (NBCOT)" for "American occupational therapy certification board (AOTCB)"; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: At end of (6)(b) substituted "certification board (AOTCB)" for "association".

37-24-105. Use of superficial physical agent modalities.

Compiler's Comments

Effective Date: Section 5, Ch. 297, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 9, 1993.

Administrative Rules

Title 24, chapter 165, subchapter 5, ARM Licensing and scope of practice.

37-24-106. Use of sound and electrical physical agent modalities.

Compiler's Comments

2019 Amendment: Chapter 112 deleted former (1)(c) that read: "(c) (i) provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c); or

(ii) has successfully completed 20 hours of instruction or training and five proctored treatments under the direct supervision of a licensed medical practitioner in sound physical agent modality devices and 20 hours of instruction or training and five proctored treatments under the direct supervision of a licensed medical practitioner in electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c)"; and made minor changes in style. Amendment effective October 1, 2019.

2003 Amendment: Chapter 101 in (1) at beginning inserted exception clause; in (1)(b) near middle after "modalities to the" inserted "shoulder, arm" and near end substituted "upper extremity function" for "hand function"; in (1)(c)(ii) near beginning reduced hours from 100 to 20 and near middle after "training" substituted "and five proctored treatments under the direct supervision of a licensed medical practitioner in sound physical agent modality devices and 20 hours of instruction or training and five proctored treatments under the direct supervision of a licensed medical practitioner in electrical physical agent modality devices" for "in sound and electrical physical agent modality devices"; inserted (2) concerning work under direct supervision of a qualified occupational therapist; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: Section 5, Ch. 297, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 9, 1993.

Administrative Rules

Title 24, chapter 165, subchapter 5, ARM Licensing and scope of practice.

37-24-107. Use of occupational therapy techniques involving topical medications.

Compiler's Comments

2019 Amendment: Chapter 112 in introductory clause after "completed the following" deleted "hours of instruction in addition to those provided for in 37-24-106"; and in (1) substituted "relevant to" for "as it pertains to". Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2003.

Administrative Rules

ARM 24.165.514 Qualifications to apply topical medications — clinician defined.
ARM 24.165.516 Use of topical medications.

37-24-108. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

37-24-109. Board adoption of protocols.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Administrative Rules

ARM 24.165.517 Protocols for use of topical medications.
ARM 24.165.518 Debriding agents protocols.
ARM 24.165.519 Anesthetic agents protocols.
ARM 24.165.520 Nonsteroidal anti-inflammatory agents protocols.
ARM 24.165.521 Antispasmodic agents protocols.
ARM 24.165.522 Adrenocortico-steroid agent protocols.
ARM 24.165.524 Protocol for use of approved medication as neuropathic pain agent.

Part 2
Board of Occupational Therapy Practice

37-24-201. Organization — general rulemaking power.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former (3) that read: "(3) Three board members constitute a quorum for the transaction of business"; and made minor changes in style. Amendment effective October 1, 2001.

Statement of Intent: The statement of intent attached to Ch. 629, L. 1985, provided: "A statement of intent is required for this act because it delegates rulemaking authority to the board of occupational therapy practice. It is the intent of the legislature that in adopting its rules the board should look to standards promulgated by the American occupational therapy association and the committee on allied health, education, and accreditation of the American medical association. These standards should provide guidance to the board for rules regarding recognition of educational programs and the type of examination to be given for licensure. The legislature intends that rules adopted by board governing licensure and conduct of members of the profession be aimed at ensuring the public that practitioners are competent and are providing quality health care services within the scope of this act."

Administrative Rules

ARM 24.165.101 Organization rule.
ARM 24.165.201 Procedural rules.
ARM 24.165.202 Public participation.
Title 24, chapter 165, subchapter 4, ARM General provisions.

37-24-202. Powers and duties of board.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1)(b) that read: "(b) evaluate the qualifications of applicants for licensure under this chapter and approve and supervise the examination of applicants"; deleted former (1)(d) that read: "(d) conduct hearings and keep records and minutes as the board considers necessary to carry out its functions"; deleted former (3) that read: "(3) The department may employ persons it considers necessary to carry out the provisions of this chapter"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 deleted former (1)(c) that required Board to investigate persons engaging in practices that allegedly violate the provisions of this chapter; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Part 3
Licensing

37-24-301. License required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Grandfather Provisions: Section 20, Ch. 629, L. 1985, provided: "The board shall grant a license to any person certified as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) by the American occupational therapy association (AOTA) prior to October 1, 1985."

37-24-302. Application.

Compiler's Comments

1989 Amendment: At end substituted "through (1)(c)" for "and (1)(b)".

37-24-303. Requirements for licensure.

Compiler's Comments

2005 Amendment: Chapter 467 in (1)(d) at end substituted "prescribed by the board" for "as provided for in 37-24-304". Amendment effective July 1, 2005.

2003 Amendment: Chapter 114 in (1)(c) at end substituted "national board for certification in occupational therapy, inc. (NBCOT)" for "American occupational therapy certification board (AOTCB)"; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: Inserted (1)(c) requiring applicant for licensure to submit evidence of Board certification.

37-24-310. Fees.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1)(b) that read: "(b) examination"; deleted former (1)(d) and (1)(e) that read: "(d) license renewal;

(e) late license renewal"; deleted former (2) that read: "(2) All fees collected by the board under this section must be deposited in the state special revenue fund for the use of the board in administering this act, subject to 37-1-101(6)"; and made minor changes in style. Amendment effective July 1, 2005.

Administrative Rules

ARM 24.165.401 Fees.

37-24-312. Criminal record background check.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 4
Occupational Therapy Licensure Compact

37-24-401. Occupational therapy licensure compact enactment — provisions.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

CHAPTER 25
NUTRITIONISTS

Part 1
General

37-25-102. Definitions.

Compiler's Comments

1989 Amendment: Deleted former (4) that read: "(4) "Department" means the department of commerce"; and deleted (11) that read: "(11) "Registered dietitian" means a person who is registered by the commission."

Part 2
Board of Medical Examiners

37-25-201. Powers and duties of board.

Compiler's Comments

2005 Amendment: Chapter 467 near beginning after "board by" inserted "Title 37, chapter 1, and"; deleted former (1) that read: "(1) examine qualified applicants for a license to practice dietetics-nutrition, issue licenses to applicants who meet the requirements established by this chapter, and renew licenses as provided in 37-25-307"; and made minor changes in style. Amendment effective July 1, 2005.

Statement of Intent: The statement of intent attached to Ch. 529, L. 1987, provided: "A statement of intent is required for this bill because section 10 [37-25-201] requires the board of medical examiners to adopt rules that set professional, practice, and ethical standards for licensed nutritionists and such other rules as may be necessary for the administration of this act.

The legislature intends that the board adopt rules to protect the public health, safety, and welfare by regulating nutritional assessment and counseling and by protecting the title of nutritionist.

The legislature further intends to provide recourse in cases of misrepresentation or clear and direct harm in nutritional practice, recognizing as well that the public's constitutional freedoms and right to the pursuit of health must not be limited without good cause.

The legislature does not intend to prevent the sale of nutritional products nor to prevent the exercise of responsible salesmanship in judging customers' needs and recommending products."

Administrative Rules

ARM 24.156.409 Fee schedule.
ARM 24.156.1306 Professional conduct and standards of professional practice.

Part 3
Licensing

37-25-302. Licensing requirements.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 24.156.409 Fee schedule.

37-25-303. Issuance of license.

Compiler's Comments

2009 Amendment: Chapter 109 deleted former (2) that read: "(2) The license is effective on the date of issuance and expires 1 year after that date"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

37-25-304. Exemptions from licensure requirements.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-25-305. Representation to public as nutritionist — limitation on use of title.

Compiler's Comments

1997 Amendment: Chapter 42 at end substituted "37-25-102(9)(b)" for "37-25-102(10)(b)"; and made minor changes in style. Amendment effective March 12, 1997.

Administrative Rules

ARM 24.156.1306 Professional conduct and standards of professional practice.

37-25-308. Grounds for revocation, suspension, or refusal to renew license.

Administrative Rules

ARM 24.156.1307 Unprofessional conduct.

CHAPTER 26
NATUROPATHIC PHYSICIANS

Chapter Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 306, L. 1991, provided: "A statement of intent is required for this bill because [sections 7 and 10] [37-26-304 and 37-26-201] grant to the board of naturopathic physicians [now alternative health care board] rulemaking authority to implement the provisions of this bill. It is the intent of the legislature that the board, at a minimum, adopt rules:

(1) specifying the scope of practice of naturopathic medicine;

(2) establishing license application and examination procedures, fees, and criteria for minimal educational and clinical requirements;

(3) developing procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses and procedures for certificates of specialty practice; and

(4) establishing investigatory procedures for processing complaints."

Severability: Section 20, Ch. 306, L. 1991, was a severability clause.

Coordination Instruction: Section 3(2), Ch. 524, L. 1991, provided: "If Senate Bill No. 66 is passed and approved and if it contains a section of law creating the board of naturopathic physicians and a section of law defining the term "board" as the board of naturopathic physicians, then the section of law in Senate Bill No. 66 creating the board of naturopathic physicians is void and the section of law in Senate Bill No. 66 defining the board must provide that the term "board" means the alternative health care board as established in [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)]. Any reference to the term "board" in Senate Bill No. 66 must then be construed to mean the alternative health care board established in [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)], and any reference in Senate Bill No. 66 to the bill section creating the board of naturopathic physicians must be construed as a reference to [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)]." Senate Bill No. 66 was approved April 1, 1991, as Ch. 306, L. 1991. Chapter 524, L. 1991, rendered sec. 9, Ch. 306, void, and the definition of Board in 37-26-103 was revised to mean the Alternative Health Care Board.

Chapter Administrative Rules

Title 24, chapter 111, subchapter 5, ARM Licensing and scope of practice — naturopathic physicians.

Part 1
General

37-26-101. Short title.

Compiler's Comments

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

37-26-102. Legislative finding — purpose.

Compiler's Comments

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

37-26-103. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 236, L. 2023. Amendment effective April 24, 2023.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "2-15-1701" for "2-15-1801". Amendment effective July 1, 2001.

Coordination Instruction: Section 3(2), Ch. 524, L. 1991, provided: "If Senate Bill No. 66 is passed and approved and if it contains a section of law creating the board of naturopathic physicians and a section of law defining the term "board" as the board of naturopathic physicians, then the section of law in Senate Bill No. 66 creating the board of naturopathic physicians is void and the section of law in Senate Bill No. 66 defining the board must provide that the term "board" means the alternative health care board as established in [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)]. Any reference to the term "board" in Senate Bill No. 66 must then be construed to mean the alternative health care board established in [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)], and any reference in Senate Bill No. 66 to the bill section creating the board of naturopathic physicians must be construed as a reference to [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)]." Senate Bill No. 66 was approved April 1, 1991, as Ch. 306, L. 1991. Chapter 524, L. 1991, rendered sec. 9, Ch. 306, void, and the definition of Board in 37-26-103 was revised to mean the Alternative Health Care Board.

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

Part 2
Alternative Health Care Board

37-26-201. Powers and duties of board.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 236, L. 2023. Amendment effective April 24, 2023.

2007 Amendment: Chapter 502 deleted former (9) that read: "(9) adopt rules to implement the provisions in 37-1-138"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendment: Chapter 467 deleted former (3) that read: "(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination"; in (4) after "fees" deleted "commensurate with costs", after "application" deleted "examination", and after "licensure" deleted "and other administrative services"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 inserted (10) requiring the board to adopt rules to implement the provisions in 37-1-138; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 481 at end of (8), after "surgery", deleted "or the legend drugs"; inserted (9) requiring Board to adopt rules containing natural substance formulary list; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41], [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30."

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment: Chapter 429 deleted (7) through (9) that read: "(7) adopt rules for the investigation of complaints against naturopathic physicians, for hearings on complaints, and to impose disciplinary action against naturopathic physicians found to be in violation of this chapter;

(8) investigate individuals falsely claiming to be naturopathic physicians and act in cooperation with county attorneys to enforce the provisions of this chapter;
(9) adopt rules that establish, approve, and routinely review a continuing education curriculum and accreditation for naturopathic physicians that is required for license renewal"; deleted (11) that required Board to issue temporary licenses as provided in 37-26-403; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 314 in (5), before "fees", inserted "nonrefundable". Amendment effective April 12, 1993.

Effective Date: Section 22(1), Ch. 306, L. 1991, provided: "[Sections 9, 10, 11, and this section] [37-26-201 and 37-26-202] are effective on passage and approval." [Section 9] was voided by sec. 3(2), Ch. 524, L. 1991. Approved April 1, 1991.

Administrative Rules

ARM 24.111.402 Management of infectious waste.

37-26-202. Board meetings.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former (3) that read: "(3) A majority of the board constitutes a quorum for the transaction of business." Amendment effective October 1, 2001.

1993 Amendment: Chapter 314 in (3) substituted "A majority of the board constitutes a quorum for the transaction of business" for "All members must be present in order to conduct board business"; and made minor changes in style. Amendment effective April 12, 1993.

Effective Date: Section 22(1), Ch. 306, L. 1991, provided: "[Sections 9, 10, 11, and this section] [37-26-201 and 37-26-202] are effective on passage and approval." [Section 9] was voided by sec. 3(2), Ch. 524, L. 1991. Approved April 1, 1991.

Part 3
Scope of Practice

37-26-301. Practice of naturopathic health care — alternative health care formulary committee.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 236, L. 2023, in (2) after "the following" deleted "natural" and near end substituted "as specified by the formulary list" for "on the natural substance formulary list"; and in (3) near end of first sentence after "establish a" deleted "natural substance". Amendment effective April 24, 2023.

Sec. 2, Ch. 237, L. 2023, in (2) near beginning after "administer" inserted "and dispense"; in (5) deleted former first sentence that read "Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2)"; and made minor changes in style. Amendment effective April 24, 2023.

2003 Amendment: Chapter 224 near middle of first sentence in (1) substituted "37-3-103(1)(m)" for "37-3-103(1)(n)". Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1997 Amendment: Chapter 481 at end of (2) inserted "as well as drugs on the natural substance formulary list provided for in subsection (3)"; inserted (3) regarding alternative health care formulary committee and criteria for establishing formulary list; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 452, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician;

the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30."

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1993 Amendment: Chapter 314 in (1)(a), after "preparations", inserted "the natural therapeutic substances, drugs, and therapies described in subsection (2)"; and made minor changes in style. Amendment effective April 12, 1993.

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

Administrative Rules

ARM 24.111.501 Minimum naturopathic medical education standards.

ARM 24.111.511 Naturopathic physician natural substance formulary list.

ARM 24.111.512 Naturopathic scope of practice.

Case Notes

Medical Malpractice — Evidence of Prohibited Sale and Marketing of Medication Inadmissible — Relevance Outweighed by Prejudice: The plaintiff sued the defendant, a naturopath, who had applied a black salve to her that disfigured her face. The defendant sought to exclude evidence at trial that federal law prohibited the sale, market, or manufacture of the salve because, he argued, it was overly prejudicial. The District Court agreed and disallowed the evidence. After a jury awarded the plaintiff some damages, she appealed, arguing that the District Court had abused its discretion by disallowing the evidence. The Supreme Court affirmed, holding that the naturopath had not himself sold, marketed, or manufactured the salve and that the relevance of the evidence did not outweigh its prejudicial value. McColl v. Lang, 2016 MT 255, 385 Mont. 150, 381 P.3d 574.

37-26-302. Exemptions.

Compiler's Comments

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

37-26-303. Public health duties of naturopathic physicians.

Compiler's Comments

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

37-26-304. Naturopathic childbirth attendance — certification for specialty practice — requirements.

Compiler's Comments

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

Administrative Rules

ARM 24.111.510 Certification for specialty practice of naturopathic childbirth attendance.

Part 4
Licensing

37-26-401. License required — titles restricted — enjoining unlawful practice.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

37-26-402. Qualifications for licensure.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

Administrative Rules

ARM 24.111.501 Minimum naturopathic medical education standards.
ARM 24.111.2102 Naturopathic physician continuing education requirements.

37-26-403. Application for licensure.

Compiler's Comments

2007 Amendment: Chapter 502 deleted former (2) that read: "(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendment: Chapter 467 in (1) at end of first sentence after "department" deleted "in the manner and form prescribed by the board"; in (2) deleted former second sentence that read: "The application for examination must be accompanied by the examination fee"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in third sentence in (1) substituted "department" for "board" and in fourth sentence substituted "department's" for "board's"; and deleted (3) that read: "(3) A person who has actively engaged in the practice of naturopathic medicine in Montana prior to April 1, 1991, and who is a graduate of an approved naturopathic medical college may continue to practice naturopathic medicine until the board reviews his qualifications if he applies to and receives from the department a temporary license by October 1, 1991. The department shall issue a temporary license to a qualified applicant. The board shall, within 6 months of October 1, 1991, review the qualifications of each temporary licensee and either authorize the department to issue a license to a person qualified under 37-26-402 or 37-26-404 or extend the temporary license for a term of no more than 1 year to allow the practitioner to pass the prescribed examination. A person who is not a graduate of an approved naturopathic medical college may not be granted a temporary license."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

Administrative Rules

ARM 24.111.502 Licensing by examination.
ARM 24.111.503 Licensing of applicants by endorsement.

37-26-405. Issuance of license.

Compiler's Comments

Effective Date: Section 22(2), Ch. 306, L. 1991, provided: "[Sections 1 through 8 and 12 through 21] [37-26-101 through 37-26-103, 37-26-301 through 37-26-304, 37-26-401 through 37-26-405, 37-26-408 through 37-26-410, and 37-26-414] [37-26-404, 37-26-408 through 37-26-410, and 37-26-414 now repealed] are effective October 1, 1991."

CHAPTER 27
DIRECT-ENTRY MIDWIFERY

Chapter Compiler's Comments

Alternative Health Care Board: Section 3, Chapter 524, L. 1991, provided that if Ch. 524 was passed and approved, the Alternative Health Care Board was substituted for the Board of Direct-Entry Midwifery. The Code Commissioner has not codified sec. 5, Ch. 550, L. 1991, creating the Board of Direct-Entry Midwifery, to reflect Ch. 524.

1991 Statement of Intent: The statement of intent attached to Ch. 550, L. 1991, provided: "A statement of intent is required for this bill because [section 6] [37-27-105] grants rulemaking authority to the board of direct-entry midwifery [alternative health care board] to implement the provisions of this bill. In adopting rules, the board is encouraged to review regulations promulgated by the state of New Hampshire and, where appropriate, to adopt comparable rules specifically applicable to direct-entry midwifery in Montana. At a minimum, it is the intent of the legislature that the board adopt rules:

(1) governing the conduct of board business;

(2) establishing license application and examination procedures, criteria for and grading of examinations, examination and license fees, criteria for minimum educational, apprenticeship, and clinical requirements for license eligibility, and continuing education requirements for license renewal;

(3) establishing eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(4) developing procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses;

(5) creating disciplinary standards for licensees, establishing investigatory procedures for processing complaints, and adopting ethical standards for licensed direct-entry midwives;

(6) establishing supporting documentation for primary birth attendants;

(7) establishing standardized informed consent and reporting forms; and

(8) establishing criteria that limits an apprenticeship, as provided in [section 6] [37-27-105]." (Section 3, Ch. 524, L. 1991, provided that if it was passed and approved, the Alternative Health Care Board was substituted for the Board of Direct-Entry Midwifery.)

Part 1
General

Part Administrative Rules

Title 24, chapter 111, subchapter 6, ARM Licensing and scope of practice — direct-entry midwifery.

37-27-101. Short title.

Compiler's Comments

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

37-27-102. Purpose.

Compiler's Comments

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

37-27-103. Definitions.

Compiler's Comments

1993 Amendment: Chapter 10 deleted definition of Department.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Coordination Instruction: Section 3, Ch. 524, L. 1991, provided in part: "If Senate Bill No. 172 is passed and approved and if it contains a section of law creating the board of direct-entry midwifery and a section of law defining the term "board" as the board of direct-entry midwifery, then the section in Senate Bill No. 172 creating the board of direct-entry midwifery is void and the section in Senate Bill No. 172 defining the board must provide that "board" means the alternative health care board established in [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)]. Any reference to the term "board" in Senate Bill No. 172 must then be construed to mean the alternative health care board established in [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)], and any reference in Senate Bill No. 172 to the bill section creating the board of direct-entry midwifery must be construed as a reference to [section 1 of this act] [2-15-1840 (renumbered 2-15-1730)]." Senate Bill No. 172 was approved April 23, 1991, as Ch. 550, L. 1991. Chapter 524, L. 1991, rendered sec. 5, Ch. 550, L. 1991, void and changed the definition of Board to mean the Alternative Health Care Board.

Administrative Rules

ARM 24.111.301 Definitions.

37-27-104. Exemptions.

Compiler's Comments

2019 Amendment: Chapter 220 in (1) near beginning substituted "licensed emergency care provider" for "licensed basic or advanced emergency medical technician". Amendment effective July 1, 2019.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

37-27-105. General powers and duties of board — rulemaking authority.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 291, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 467 in (1)(a) after "described in" inserted "Title 37, chapter 1, and"; deleted former (3)(a) and (3)(b) that read: "(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989"; deleted former (3)(e) and (3)(f) that read: "(e) the development of procedures for the issuance, renewal, suspension, and revocation of licenses consistent with the provisions in 37-1-138;

(f) the adoption of disciplinary standards for licensees"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 224 in second sentence in (3) substituted "may" for "must". Amendment effective July 1, 2003.

Chapter 271 in (3)(e) at end inserted "consistent with the provisions in 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1995 Amendment: Chapter 429 in (1)(e), after "revocation", deleted "and reciprocity"; deleted former (3)(g) that required Board to adopt rules for the establishment of investigatory and hearing procedures for processing complaints received by the Board; deleted former (3)(h) that required Board to adopt rules for the establishment of continuing education requirements of at least 14 hours annually for license renewal for direct entry midwives; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Effective Date: Section 27(1), Ch. 550, L. 1991, provided that this section is effective on passage and approval. Approved April 23, 1991.

Administrative Rules

ARM 24.111.402 Management of infectious waste.
ARM 24.111.610 High-risk pregnancy — conditions requiring primary care by physician.
ARM 24.111.612 Vaginal birth after cesarean (VBAC) deliveries.

37-27-111. Parents' rights regarding birth of baby.

Compiler's Comments

Effective Date: Section 5, Ch. 493, L. 1989, provided that this section is effective April 11, 1989.

Part 2
Licensure

Part Compiler's Comments

Emergency Medical Training — Not Codified: Section 2, Ch. 493, L. 1989, which was codified as 37-75-102, is no longer codified because it is temporary in nature and conflicts with the provisions of Title 37, ch. 27, part 2. Section 2, Ch. 493, L. 1989, reads: "Affidavit required. A direct-entry midwife shall file an affidavit with the department of commerce [now department of labor and industry] certifying that he or she has completed the emergency childbirth training segment of a state-approved emergency medical training program within 12 months of [the effective date of this act]." Chapter 493 was effective April 11, 1989. Section 2, Ch. 493, L. 1989, has not been repealed and is still valid law.

37-27-201. Qualifications of applicants for license — educational and practical experience requirements.

Compiler's Comments

1999 Amendment: Chapter 230 inserted (6) requiring direct-entry midwife applicant to file with board documentation of current certification; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 314 in (1) substituted "must possess a high school diploma or its equivalent" for "must be a high school graduate"; in (4)(c), after "evidenced by", substituted subsections (i) through (iii) regarding evidence in the form of birth certificates, affidavits, or records for "signing the birth certificate as the primary birth attendant". Amendment effective April 12, 1993.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Administrative Rules

ARM 24.111.601 Minimum direct-entry midwife education standards.
ARM 24.111.2103 Midwives continuing education requirements.

37-27-202. Examination — preparation — requirements.

Compiler's Comments

2003 Amendment: Chapter 224 in (1) substituted "national testing agency approved by the board" for "certified nurse midwife designated by the board in consultation with the physician on the board"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1993 Amendment: Chapter 314 substituted (3) regarding passing grade for licensure for former language that read: "A person must attain a grade of at least 70% to pass the examination." Amendment effective April 12, 1993.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Administrative Rules

ARM 24.111.603 Direct-entry midwife protocol standard list required for application.
ARM 24.111.604 Licensing by examination.
ARM 24.111.605 Licensure of out-of-state applicants.

37-27-203. Examination — exemption.

Compiler's Comments

1993 Amendment: Chapter 314 in (2) and introductory clause of (3) substituted "37-27-201(3) and (4)" for "37-27-201(2) and (3)". Amendment effective April 12, 1993.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Administrative Rules

ARM 24.111.604 Licensing by examination.

ARM 24.111.605 Licensure of out-of-state applicants.

37-27-205. Provisional license — apprentice license.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) near beginning and in two places in (2) after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1999 Amendment: Chapter 230 deleted former (1) and (2) that read: "(1) Upon payment of a $200 fee to the department, the board may grant a provisional direct-entry midwife license only to a person who filed an affidavit required by section 2, Chapter 493, Laws of 1989.

(2) The provisional license is valid until the issuance of grades for the first examination administered pursuant to 37-27-202"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 492 in (4) substituted "a period prescribed by department of commerce rule" for "1 year" and substituted "at an interval established by the department of commerce" for "annually". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1993 Amendment: Chapter 314 at end of (3)(a) inserted "or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance"; and made minor changes in style. Amendment effective April 12, 1993.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Administrative Rules

ARM 24.111.602 Direct-entry midwife apprenticeship requirements.

37-27-210. Fees.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at end after "board" deleted "commensurate with costs"; deleted former (2) that read: "(2) An applicant required to take an examination shall, before commencement of the examination, pay an examination fee set by the board, commensurate with costs"; in (2) at end after "board" deleted "commensurate with costs"; deleted former (4) that read: "(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for use by the board"; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendment: Chapter 314 inserted (5) regarding nonrefundability of fees. Amendment effective April 12, 1993.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Administrative Rules

ARM 24.111.401 Fees.

37-27-212. Title restricted — enjoining unlawful practice.

Compiler's Comments

Effective Date: Section 14, Ch. 314, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 12, 1993.

Part 3
Regulation of Practice

37-27-301. Unlawful to practice without license.

Compiler's Comments

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

37-27-302. Administration of prescription drugs — when prohibited — when allowed — protocols — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 262, L. 2023. Amendment effective October 1, 2023.

2007 Amendment: Chapter 44 near end after "accordance with" substituted "administrative rules adopted by the department of public health and human services" for "ARM 16.24.215". Amendment effective October 1, 2007.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

37-27-303. Operative and surgical procedures prohibited — exception.

Compiler's Comments

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

37-27-310. Privileged communications — exceptions.

Compiler's Comments

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

37-27-311. Informed consent.

Compiler's Comments

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

37-27-312. Screening procedures.

Compiler's Comments

2001 Amendment: Chapter 351 in (1) substituted "50-19-101" for "50-19-101(2)"; in (2) deleted screening for hepatitis B; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Administrative Rules

ARM 24.111.609 Additional recommended screening procedures.

37-27-315. Physician consultation advised.

Compiler's Comments

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Administrative Rules

ARM 24.111.611 Conditions that require physician consultation or transfer of care.

ARM 24.111.612 Vaginal birth after cesarean (VBAC) deliveries.

37-27-320. Reports — failure to report.

Compiler's Comments

1995 Amendments: Chapter 418 in (2) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

Administrative Rules

ARM 24.111.613 Required reports.

37-27-321. Filing of birth certificate.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 515 in (1) substituted "50-15-221" for "50-15-201" and at end deleted "within 30 days of the birth of the newborn". Amendment effective January 1, 1996.

Chapter 546 in (1) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 27(2), Ch. 550, L. 1991, provided that this section is effective July 1, 1991.

CHAPTER 28
RESPIRATORY CARE PRACTITIONERS

Chapter Administrative Rules

Title 24, chapter 213, ARM Board of Respiratory Care Practitioners.

Part 1
General

Part Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 532, L. 1991, provided: "A statement of intent is required for this bill because [section 5] [37-28-104] grants rulemaking authority to the board of respiratory care practitioners.

(1) In outlining the powers and responsibilities of the board of respiratory care practitioners, it is the intent of [section 5] [37-28-104] that the board have authority to adopt rules to implement and enforce [sections 1, 2, and 4 through 13] [Title 37, ch. 28] and specific authority to adopt rules regarding:

(a) license and temporary permit applications and procedures necessary to receive and process those applications;

(b) examinations and criteria for grading examinations;

(c) disciplinary standards for licensees and temporary permitholders, including definitions of conduct for which discipline may be appropriate;

(d) continuing education requirements;

(e) investigations of complaints;

(f) setting and modifying appropriate fees;

(g) a process for renewal of licenses and temporary permits, including procedures for late renewal;

(h) waiver of license requirements as provided in [section 7(2)] [37-28-202(2)]; and

(i) reciprocity conditions applicable to licensure.

(2) It is the intent of the legislature that the governor have the authority to implement staggered terms for board members during the appointment process."

Severability: Section 15, Ch. 532, L. 1991, was a severability clause.

Part Administrative Rules

ARM 24.213.101 Board organization.

37-28-102. Definitions.

Administrative Rules

ARM 24.213.301 Definitions.

37-28-103. Board meetings — procedure — seal.

Compiler's Comments

2001 Amendment: Chapter 492 in (1)(a) in first sentence after "at least once a year" deleted "and shall elect annually a president, vice president, and secretary-treasurer from its membership"; inserted (1)(b) regarding designation of presiding officer; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 17, Ch. 532, L. 1991, provided: "[Sections 3 through 5, 14 through 16, and this section] are effective on passage and approval." Approved April 22, 1991.

Administrative Rules

ARM 24.213.201 Procedural rules.

37-28-104. Board powers and duties.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at beginning after "shall" deleted "examine"; deleted former (1)(b) and (1)(c) that read: "(b) establish examinations and passing scores for licensure under 37-28-202;

(c) adopt and implement rules for continuing education requirements to ensure the quality of respiratory care"; deleted former (2)(b) that read: "(b) establish relicensing requirements and procedures that the board considers appropriate"; and made minor changes in style. Amendment effective July 1, 2005.

Effective Date: Section 17, Ch. 532, L. 1991, provided: "[Sections 3 through 5, 14 through 16, and this section] are effective on passage and approval." Approved April 22, 1991.

Part 2
Licensure

Part Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 532, L. 1991, provided: "A statement of intent is required for this bill because [section 5] [37-28-104] grants rulemaking authority to the board of respiratory care practitioners.

(1) In outlining the powers and responsibilities of the board of respiratory care practitioners, it is the intent of [section 5] [37-28-104] that the board have authority to adopt rules to implement and enforce [sections 1, 2, and 4 through 13] [Title 37, ch. 28] and specific authority to adopt rules regarding:

(a) license and temporary permit applications and procedures necessary to receive and process those applications;

(b) examinations and criteria for grading examinations;

(c) disciplinary standards for licensees and temporary permitholders, including definitions of conduct for which discipline may be appropriate;

(d) continuing education requirements;

(e) investigations of complaints;

(f) setting and modifying appropriate fees;

(g) a process for renewal of licenses and temporary permits, including procedures for late renewal;

(h) waiver of license requirements as provided in [section 7(2)] [37-28-202(2)]; and

(i) reciprocity conditions applicable to licensure.

(2) It is the intent of the legislature that the governor have the authority to implement staggered terms for board members during the appointment process."

Licensure — Grandfather Provision: Section 14, Ch. 532, L. 1991, provided: "The board shall grant a license to practice respiratory care without examination or completion of the requisite educational program to a person who has been performing respiratory care in this state for at least 1 year on [the effective date of this section] [effective April 22, 1991]."

Severability: Section 15, Ch. 532, L. 1991, was a severability clause.

Part Administrative Rules

ARM 24.213.402 Application for licensure.
ARM 24.213.403 Abatement of renewal fees.
ARM 24.213.415 Inactive status.

37-28-201. License required — exceptions — respiratory care not the practice of medicine.

Compiler's Comments

1995 Amendment: Chapter 429 in (1), after "licensed", deleted "or granted a temporary permit" and at end substituted "provisions of this chapter" for "provisions of 37-28-201 through 37-28-203 and 37-28-206"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

37-28-202. Licensing requirements — examination — fees.

Compiler's Comments

2005 Amendment: Chapter 467 in (1)(a) near middle after "board and" substituted "an application" for "a written application on a form provided by the board". Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in (1)(b), in first clause after "board", deleted "unless the examination requirement is waived under subsection (2)"; deleted former (2) that read: "(2) The board may issue a license to practice respiratory care to an applicant without requiring him to pass an examination if the applicant:

(a) is currently licensed to practice respiratory care under the laws of another state, territory, or country if the board considers the qualifications for licensure to be equivalent to those required in this state; or

(b) holds credentials, conferred by the national board for respiratory care, as a certified respiratory therapy technician or a registered respiratory therapist and affirms under oath that his credentials have not been suspended or revoked"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Administrative Rules

ARM 24.213.401 Fee schedule.
ARM 24.213.408 Examination.

Part 3
Miscellaneous

Part Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 532, L. 1991, provided: "A statement of intent is required for this bill because [section 5] [37-28-104] grants rulemaking authority to the board of respiratory care practitioners.

(1) In outlining the powers and responsibilities of the board of respiratory care practitioners, it is the intent of [section 5] [37-28-104] that the board have authority to adopt rules to implement and enforce [sections 1, 2, and 4 through 13] [Title 37, ch. 28] and specific authority to adopt rules regarding:

(a) license and temporary permit applications and procedures necessary to receive and process those applications;

(b) examinations and criteria for grading examinations;

(c) disciplinary standards for licensees and temporary permitholders, including definitions of conduct for which discipline may be appropriate;

(d) continuing education requirements;

(e) investigations of complaints;

(f) setting and modifying appropriate fees;

(g) a process for renewal of licenses and temporary permits, including procedures for late renewal;

(h) waiver of license requirements as provided in [section 7(2)] [37-28-202(2)]; and

(i) reciprocity conditions applicable to licensure.

(2) It is the intent of the legislature that the governor have the authority to implement staggered terms for board members during the appointment process."

Severability: Section 15, Ch. 532, L. 1991, was a severability clause.

CHAPTER 29
DENTURITRY

Chapter Compiler's Comments

Severability: Section 28, I.M. No. 97, approved Nov. 6, 1984, was a severability section.

Chapter Administrative Rules

Title 24, chapter 138, ARM Board of Dentistry.

Part 1
General

37-29-102. Definitions.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1987 Amendment: In (1) substituted "board of dentistry" for "board of denturitry" and changed reference to "2-15-1855" to "2-15-1842" (renumbered 2-15-1732).

Preamble: The preamble to Ch. 524, L. 1987, provided: "WHEREAS, Montana Initiative No. 97 created the Board of Denturitry; and

WHEREAS, Chapter 548, Laws of 1985, required the Legislative Audit Committee to conduct a review of the Board of Denturitry and to propose a bill to the 50th Legislature merging the Board of Denturitry and the Board of Dentistry if the Board of Denturitry has not licensed 30 denturists; and

WHEREAS, the Legislative Audit Committee has determined that the Board of Denturitry has not licensed 30 denturists."

Administrative Rules

ARM 24.138.301 Definitions.

Case Notes

Res Judicata for Claims Against Board of Dentistry: When the parties are the same as in a former action, the subject matter is the same, and the issues are the same and relate to the subject matter, the matter is res judicata to subsequent claims. Res judicata bars not only issues that were litigated in a previous action, but also those that could have been litigated in a prior proceeding. Wiser v. Bd. of Dentistry, 2011 MT 56, 360 Mont. 1, 251 P.3d 675, followed in Denturist Ass'n of Mont. v. St., 2016 MT 119, 383 Mont. 391, 372 P.3d 466.

Denturists' Due Process Rights Not Violated by Placement Under Board of Dentistry: Denturist plaintiffs contended that the policies, membership, and restrictions imposed on denturity by the Board of Dentistry was a violation of due process, entitling plaintiffs to a federal claim under 42 U.S.C. 1983. The District Court rejected the claim, and the Supreme Court affirmed. Although the Board was comprised mostly of dentists, under Friedman v. Rogers, 440 US 1 (1979), due process does not require that a regulatory board equally represent all professions subject to that board's regulations, nor is there a constitutional right for a profession to be regulated by a board that is sympathetic to the commercial practice of that profession. Additionally, under Zinermon v. Burch, 494 US 113 (1990), to determine whether a procedural due process violation has occurred, the adequacy of the state's process must be examined for constitutionality. Here, plaintiffs did not show that administrative procedures afforded to them were inadequate, and in fact, they did not avail themselves of the process available to them. Plaintiffs' failure to exhaust the administrative process precluded relief by judicial review. Thus, the due process claim failed, and absent a constitutional claim, the 42 U.S.C. 1983 claim failed as well. Wiser v. St., 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Partial Denture Rule Not Violative of Denturists' Right to Pursue Employment: Denturist plaintiffs challenged the rule of the Board of Dentistry, promulgated pursuant to 37-29-403, requiring dentist referrals before denturists may perform partial denture work, on grounds that the rule violated the constitutional right of denturists to pursue employment. Relying on Wadsworth v. St., 275 M 287, 911 P2d 1165 (1996), plaintiffs contended that they had a fundamental right to practice denturity free of regulation. Although Wadsworth did demonstrate plaintiffs' fundamental right to pursue denturity as a profession, it did not mean that denturists have a right to practice denturity free of all regulations. The partial denture rule does not bar denturity, and plaintiffs may pursue their profession as long as their patient obtains a dentist referral. Although a person does have a fundamental right to pursue employment, one does not have the right to practice a profession free of state regulation promulgated to protect the public welfare. The Supreme Court declined to apply strict scrutiny review, and plaintiffs' employment infringement argument failed. Wiser v. St., 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Rule Requiring Dentist Referrals Prior to Performance of Partial Denture Work by Denturists Not Violative of Right of Privacy: Denturist plaintiffs challenged the rule of the Board of Dentistry, promulgated pursuant to 37-29-403, requiring dentist referrals before denturists may perform partial denture work, on grounds that the rule violated the private right of patients to seek the medical professional of their choice. The District Court upheld the constitutionality of the rule, and on appeal, the Supreme Court affirmed. Although the Supreme Court affirmed the right of an individual to obtain and reject medical treatment in Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364 (1999), that general rule does not translate into a fundamental right of a patient to obtain medical care free of regulation. The state may exercise its police power to regulate for the health and safety of its citizens, and that power often implicates individual rights. However, when the rights affected are not fundamental, the state need demonstrate only a rational basis for the regulation rather than a compelling state interest. Plaintiffs did not argue whether the partial denture rule was rationally related to a legitimate state interest, and absent a showing of a fundamental right, the privacy argument failed. Wiser v. St., 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

37-29-103. Association with dentists permitted.

Case Notes

Use of Declaratory Judgment to Settle Question of Business Association Between Dentist and Denturist Improper — Dismissal for Failure to State Claim and Exhaust Administrative Remedies: Brisendine, a licensed denturist, presented to the Board of Dentistry a proposal stating his desire to enter into a business association with a dentist regarding fees and compensation. The Board issued a letter stating that it was considering the proposal but that such association would probably constitute the illegal practice of dentistry. The Board further threatened sanctions against Brisendine if he went forward with his proposal, but no final decision was ever issued by the Board. Brisendine sought a declaratory judgment and injunctive relief in District Court, requesting a decision on whether the business association was legal. The District Court dismissed the complaint for failure to present a justiciable controversy. On appeal, the Supreme Court affirmed, holding that use of a declaratory judgment at this stage of the proceedings constituted an attempt to seek an advisory opinion and an unwarranted intrusion into the Board's regulatory authority. The Supreme Court noted that Brisendine could seek a declaratory judgment from the Board without subjecting his license to suspension or revocation and that dismissal of the motion for declaratory judgment was proper because Brisendine had not exhausted his administrative remedies. Brisendine v. St., 253 M 361, 833 P2d 1019, 49 St. Rep. 444 (1992), distinguished in Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997).

Part 2
Board of Dentistry

37-29-201. Board powers and duties.

Compiler's Comments

2009 Amendment: Chapter 109 in (5) at end after "licensees" deleted "and inspection of denturitry premises and facilities"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 429 in (5), before "form", deleted "license applications" and after "facilities" deleted "and investigation of complaints"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: In (2) after "examinations", deleted "and determination of a passing grade"; and inserted (5) referring to adoption of rules.

Sunset Review: Chapter 548, L. 1985 (HB 649), provided for review of the operations of the Board of Denturitry (merged with Board of Dentistry by Ch. 524, L. 1987) by the Legislative Audit Committee. For the text of the sunset provision see compiler's comments at Title 37, ch. 29, part 3.

Statement of Intent: The statement of intent attached to Ch. 548, L. 1985, provided: "This bill is for a major revision of Initiative 97, the Denturitry Practice Act. The bill delegates new authority to the new board of denturitry [merged with Board of Dentistry by Ch. 524, L. 1987] and clarifies some delegations of authority contained in the initiative. A statement of intent is therefore required for this bill.

It is the intent of section 1 of the bill that the governor have authority to implement staggered terms of board members during the appointing process.

It is the intent of section 4 of the bill that the board of denturitry [merged with Board of Dentistry by Ch. 524, L. 1987] have general authority to adopt rules for the implementation and enforcement of the act, including specific authority to adopt rules regarding license applications, license examinations, criteria for grading examinations, disciplinary standards for licensee, inspection of premises and facilities used in the practice of the profession, and investigation of complaints.

It is the intent of section 6 of the bill that the board have authority to modify fees set by the initiative and to set and modify additional fees.

It is the intent of section 7 of the bill that the board have authority to alter license renewal dates by rule.

It is the intent of section 8 of the bill that the board have authority to define "unprofessional conduct" of licensees by rule, for the purpose of establishing license discipline conduct standards."

Administrative Rules

Title 24, chapter 138, ARM Board of Dentistry.

Attorney General's Opinions

Board of Dentistry Not to Reconsider Licensing Decisions of Board of Denturitry: Administrative agencies enjoy only those powers specifically conferred upon them by statute. They possess no common-law powers, and implied powers are limited only to those necessary for the effective exercise and discharge of powers and duties expressly conferred. Therefore, when the Board of Denturitry had no power to reconsider its licensing decisions, the Board of Dentistry, having succeeded to the functions of the Board of Denturitry, may not reconsider a prior decision of the Board of Denturitry to issue a denturist's license. 43 A.G. Op. 33 (1989).

Part 3
Licensing

Part Compiler's Comments

Sunset Review: Section 16, Ch. 548, L. 1985, provided: "Sunset review by audit committee — provisions for possible merger. (1) The legislative audit committee shall review the operations of the board of denturitry [merged with Board of Dentistry by Ch. 524, L. 1987] under the criteria of 2-8-112 and 2-8-113 and the additional criterion of whether the board has licensed a sufficient number of denturists to be a viable agency. The legislative audit committee shall, if the board has not licensed 30 denturists who are practicing in Montana by October 1, 1986, or if the board has otherwise failed to demonstrate its fiscal viability, and may in any event, prepare a bill for the 50th legislature to merge the board of denturitry with the board of dentistry [merged by Ch. 524, L. 1987].

(2) If the legislative audit committee proposes a merger under subsection (1), it shall provide that the board of dentistry consist of four dentists, one dental hygienist, one denturist, and two lay persons, one of whom must be a senior citizen representative."

37-29-301. License to practice required.

Compiler's Comments

1999 Amendment: Chapter 230 at beginning deleted "After April 1, 1985"; deleted former (2) that read: "(2) The practice of denturitry within the context of this chapter requires that all work except cast frame work be performed at the address shown on the denturist's license"; and made minor changes in style. Amendment effective October 1, 1999.

37-29-303. Application for license.

Compiler's Comments

1997 Amendment: Chapter 42 in (3), after "37-29-303", deleted "(2)"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment: Chapter 429 in middle of introductory clause, after "meets", deleted "one of"; deleted former (1) that read: "(1)(a) Applications for persons engaged in the practice of denturitry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:

(i) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and

(ii) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.

(b) Subsection (1)(a) must be applied retroactively to permit qualification of license applicants initially qualified and applying prior to the appointment and qualification of the original board under this chapter and section 27 of I.M. No. 97"; deleted former (2) providing requirements for applications filed on or after April 1, 1985; deleted (3) that read: "(3) A denturist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of denturitry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed, attesting to 5 years' practice under the certificate of license. However, no applicant may be licensed under the provisions of this subsection unless the state or territory in which he is licensed or certified extends a like privilege to denturists licensed by the state of Montana to practice denturitry. The board may enter into reciprocal relations with those states or territories whose laws are compatible with this chapter"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (2)(b)(i), near beginning, reduced from 2 years to 1 year the internship period for denturist.

1985 Amendment: Renumbered former (1)(a) and (1)(b) as (1)(a)(i) and (1)(a)(ii); inserted (1)(b) referring to retroactive application; and in (3) in last sentence, before "states", deleted "boards in".

Initiative Internal Reference: The reference in subsection (1)(b) to sec. 27 of Initiative Measure No. 97 has been left in that form because sec. 27, I.M. No. 97, was not codified. It provided for appointment to the initial board of denturitry and for the terms of office of initial board members. The initial board was confirmed by the Senate on April 9, 1985. (Sec. 10, Ch. 548, L. 1985, amended sec. 27, I.M. No. 97. For text, see Ch. 548, L. 1985.)

Administrative Rules

ARM 24.138.511 Denturist application requirements.

37-29-306. Licensing.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at end of first sentence after "rule" deleted "and expires on the date set by department rule", deleted former second sentence that read: "A renewal license must be issued upon timely payment of the renewal fee and the submission of proof of continued qualification for licensure", and deleted former fourth sentence that read: "The license must bear on its face the address where the licensee's denturist services will be performed"; in (2) in first sentence after "submitted on" substituted "a form" for "forms approved by the board and"; deleted former (3) that read: "(3) This section may not be interpreted to conflict with 37-1-138"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 inserted (3) to provide that this section may not be interpreted to conflict with 37-1-138. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 492 in (1), in first sentence, substituted "established by department rule" for "of 1 year"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 in (1), at end of first sentence, inserted "and expires on the date set by department rule", substituted second sentence concerning timely payment of renewal fee and submission of proof of continued qualification for licensure for former text that read: "A renewal license must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours of continuing education, which may include programs sponsored by an educational institution, state denturist licensing board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in 37-29-305(3). Approval of acceptable hours of continuing education must be made by the board. The board may approve, in one action, all the courses presented by a particular organization if the board is satisfied that the courses presented by that organization meet the requirements of this section. Hours pertain to clock hours actually attended by the licensee", and deleted seventh sentence that read: "A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued"; deleted (3) that read: "(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under this chapter"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (1) substituted fourth and fifth sentences regarding Board approval of hours and courses of continuing education for former fourth sentence that read: "Requests for approval of continuing education programs must be made to the board, providing sufficient outline of the program on which the board may base its determination".

1989 Amendment: In (1) substituted "state denturist licensing board" for "state denturist board".

1985 Amendment: In (1) at beginning inserted "After March 1, 1985"; in (2), deleted former first sentence that read: "Licensure applications must be received by the department on or before April 1 preceding the July examination" and deleted former last sentence that read: "Applications received after April 1 will be held over for examination the following year"; and inserted (3) allowing Board to alter future renewal dates.

Administrative Rules

ARM 24.138.511 Denturist license requirements.

Part 4
Regulation

37-29-401. Standards of conduct and practice.

Compiler's Comments

1999 Amendment: Chapter 230 deleted former (1) through (7) that read: "(1) There shall be at least three separate rooms:

(a) a reception room;

(b) an operatory room; and

(c) a laboratory.

(2) The operatory room must have a sink and cuspidor with running water and a disposal system.

(3) There must be a sterilization unit and cold disinfectant in every office to insure the protection of the public. Each denturist shall take care to use proper sterilization and sanitation techniques in all phases of his work.

(4) Floors, walls, ceilings, and benches must be kept in a sanitary condition.

(5) Every patient must have a separate and clean bib and a disposable cup.

(6) Every denturist shall wear a clean and professional garment.

(7) Every denturist shall wash his hands with germicidal or antiseptic soap and water in the presence of each patient"; deleted former (9) and (10) that read: "(9) Adequate and conveniently located toilet facilities must be provided within the building.

(10) A complete record of each patient must be kept"; and made minor changes in style. Amendment effective October 1, 1999.

37-29-402. Prohibitions.

Compiler's Comments

1991 Amendment: In (3), after "abnormalities", inserted "except that a licensed denturist may apply tissue conditioning agents".

Administrative Rules

ARM 24.138.2302 Unprofessional conduct for denturists.

Case Notes

Res Judicata for Claims Against Board of Dentistry: When the parties are the same as in a former action, the subject matter is the same, and the issues are the same and relate to the subject matter, the matter is res judicata to subsequent claims. Res judicata bars not only issues that were litigated in a previous action, but also those that could have been litigated in a prior proceeding. Wiser v. Bd. of Dentistry, 2011 MT 56, 360 Mont. 1, 251 P.3d 675, followed in Denturist Ass'n of Mont. v. St., 2016 MT 119, 383 Mont. 391, 372 P.3d 466.

37-29-403. Procedure for making and fitting partial denture.

Compiler's Comments

1995 Amendment: Chapter 429 deleted (3) that read: "(3) A denturist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in 37-29-311."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Case Notes

Denturists' Due Process Rights Not Violated by Placement Under Board of Dentistry: Denturist plaintiffs contended that the policies, membership, and restrictions imposed on denturity by the Board of Dentistry was a violation of due process, entitling plaintiffs to a federal claim under 42 U.S.C. 1983. The District Court rejected the claim, and the Supreme Court affirmed. Although the Board was comprised mostly of dentists, under Friedman v. Rogers, 440 US 1 (1979), due process does not require that a regulatory board equally represent all professions subject to that board's regulations, nor is there a constitutional right for a profession to be regulated by a board that is sympathetic to the commercial practice of that profession. Additionally, under Zinermon v. Burch, 494 US 113 (1990), to determine whether a procedural due process violation has occurred, the adequacy of the state's process must be examined for constitutionality. Here, plaintiffs did not show that administrative procedures afforded to them were inadequate, and in fact, they did not avail themselves of the process available to them. Plaintiffs' failure to exhaust the administrative process precluded relief by judicial review. Thus, the due process claim failed, and absent a constitutional claim, the 42 U.S.C. 1983 claim failed as well. Wiser v. St., 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Partial Denture Rule Not Violative of Denturists' Right to Pursue Employment: Denturist plaintiffs challenged the rule of the Board of Dentistry, promulgated pursuant to this section, requiring dentist referrals before denturists may perform partial denture work, on grounds that the rule violated the constitutional right of denturists to pursue employment. Relying on Wadsworth v. St., 275 M 287, 911 P2d 1165 (1996), plaintiffs contended that they had a fundamental right to practice denturity free of regulation. Although Wadsworth did demonstrate plaintiffs' fundamental right to pursue denturity as a profession, it did not mean that denturists have a right to practice denturity free of all regulations. The partial denture rule does not bar denturity, and plaintiffs may pursue their profession as long as their patient obtains a dentist referral. Although a person does have a fundamental right to pursue employment, one does not have the right to practice a profession free of state regulation promulgated to protect the public welfare. The Supreme Court declined to apply strict scrutiny review, and plaintiffs' employment infringement argument failed. Wiser v. St., 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Rule Requiring Dentist Referrals Prior to Performance of Partial Denture Work by Denturists Not Violative of Right of Privacy: Denturist plaintiffs challenged the rule of the Board of Dentistry, promulgated pursuant to this section, requiring dentist referrals before denturists may perform partial denture work, on grounds that the rule violated the private right of patients to seek the medical professional of their choice. The District Court upheld the constitutionality of the rule, and on appeal, the Supreme Court affirmed. Although the Supreme Court affirmed the right of an individual to obtain and reject medical treatment in Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364 (1999), that general rule does not translate into a fundamental right of a patient to obtain medical care free of regulation. The state may exercise its police power to regulate for the health and safety of its citizens, and that power often implicates individual rights. However, when the rights affected are not fundamental, the state need demonstrate only a rational basis for the regulation rather than a compelling state interest. Plaintiffs did not argue whether the partial denture rule was rationally related to a legitimate state interest, and absent a showing of a fundamental right, the privacy argument failed. Wiser v. St., 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Administrative Rule Valid — Referral to Dentist Mandatory: Plaintiffs failed to make a clear showing that a Board of Dentistry's rule requiring referral to a dentist prior to a denturist starting services added provisions not envisioned by the Legislature. The District Court erred when it declared the rule invalid. An administrative agency's interpretation of a statute under its domain is presumed to be controlling. Christenot v. St., 272 M 396, 901 P2d 545, 52 St. Rep. 749 (1995). See also Hawley v. Bd. of Oil & Gas Conserv., 2000 MT 2, 297 M 467, 993 P2d 677, 57 St. Rep. 5 (2000).

Attorney General's Opinions

Referral to Dentist Necessary Prior to Making and Fitting Partial Denture: A denturist has no discretion with respect to referral of a patient under this section. Therefore, a denturist must refer a patient to a dentist prior to making, fitting, or reconstructing a partial denture. 44 A.G. Op. 36 (1992).

37-29-404. Guarantee.

Compiler's Comments

1999 Amendment: Chapter 230 deleted former (1) regarding posting of notice and form of notice (see 1999 Session Law for former text); and made minor changes in style. Amendment effective October 1, 1999.

1987 Amendment: In notice provision of (1) substituted "board of dentistry" for "board of denturitry".

Preamble: The preamble to Ch. 524, L. 1987, provided: "WHEREAS, Montana Initiative No. 97 created the Board of Denturitry; and

WHEREAS, Chapter 548, Laws of 1985, required the Legislative Audit Committee to conduct a review of the Board of Denturitry and to propose a bill to the 50th Legislature merging the Board of Denturitry and the Board of Dentistry if the Board of Denturitry has not licensed 30 denturists; and

WHEREAS, the Legislative Audit Committee has determined that the Board of Denturitry has not licensed 30 denturists."

37-29-405. Advertising restrictions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 31
BARBERING, COSMETOLOGY, ELECTROLOGY, ESTHETICS, AND MANICURING

Chapter Administrative Rules

Title 24, chapter 121, ARM Board of Barbers and Cosmetologists.

Chapter Case Notes

Constitutionality: Former Title 37, ch. 30, is within state's police powers; it was not rendered unconstitutional as discriminatory by fact that those practicing barbering within state at time of its passage were not required to pass an examination while defendant, who was so practicing in another state at that date, was required to pass an examination. St. v. Bays, 100 M 125, 47 P2d 50 (1935).

Chapter Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

Part 1
General

37-31-101. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 8, Ch. 166, L. 2023, deleted definition of instructor or teacher; in definition of teacher at end substituted reference to 37-31-303 for reference to 37-31-305; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 192, L. 2023, inserted definition of natural hair braiding; and made minor changes in style. Amendment effective October 1, 2023.

2021 Amendment: Chapter 544 inserted definitions of affiliated, barber, barbering, barber nonchemical, barbering nonchemical, cosmetologist, cosmetology, electrologist, instructor, manicurist, student teacher, teacher, and teacher training; deleted former definitions of practice or teaching of barbering, practice or teaching of barbering nonchemical, and practice or teaching of cosmetology (see 2021 Session Law for former text); in definition of salon near end substituted "practice of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring" for "practice of barbering or barbering nonchemical or the practice of cosmetology"; in definition of school substituted current definition for former definition (see 2021 Session Law for former text); and made minor changes in style. Amendment effective January 1, 2021.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 in definitions of booth, salon or shop in three places, and school inserted references to barbering nonchemical; inserted definition of practice or teaching of barbering nonchemical; and made minor changes in style. Amendment effective October 1, 2015.

2007 Amendment: Chapter 36 inserted definition of place of residence; in definition of salon or shop inserted (b) providing that a salon or shop does not include a room in a place of residence except under certain conditions; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 243 in definition of board inserted "barbers and"; in definition of booth substituted "salon or shop" for "cosmetology, manicuring, or esthetics salon", added barbering and electrology to the listed services, and substituted "39-51-204" for "39-51-204(1)(e)"; deleted definition of cosmetology salon that read: ""Cosmetology salon" means the premises, a building, or a part of a building in which a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist is practiced by a person licensed under the provisions of this chapter"; inserted definition of electrology; in definition of esthetics substituted "body" for "face, neck, and hands"; deleted definition of esthetics salon that read: ""Esthetics salon" means the premises, a building, or a part of a building in which the art of esthetics is practiced"; in definition of manicuring substituted "care of the nails, the hands, the lower arms, the feet, and the lower legs" for "nail care of the hands and feet"; deleted definition of manicuring salon that read: ""Manicuring salon" means the premises, a building, or a part of a building in which the art of manicuring is practiced"; inserted definition of practice or teaching of barbering; in definition of practice or teaching of cosmetology substituted "salons or shops" for "cosmetology salons" and at end substituted "and body" for "scalp, face, arms, feet, or hands"; inserted definitions of salon or shop and school; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendments: Chapter 305 in definition of booth inserted references to esthetics salon and to manicuring and esthetics services; in definition of cosmetology salon, at end, substituted "is practiced by a person licensed under the provisions of this chapter" for "and that must have a manager-operator in charge"; inserted definitions of esthetician, esthetics, and esthetics salon; in definition of practice and teaching of cosmetology, near beginning, inserted "esthetics"; and made minor changes in style.

Chapter 491 in definition of booth, at end, substituted "39-51-204(1)(e)" for "39-51-204(1)(l)". Amendment effective January 1, 1998.

Preamble: The preamble attached to Ch. 491, L. 1997, provided: "WHEREAS, House Bill No. 98 (Ch. 48, L. 1995), enacted by the 54th Legislature, excluded direct sellers from minimum wage, overtime, unemployment insurance, and workers' compensation requirements; and

WHEREAS, the Legislature in House Bill No. 98 adopted the federal definition of direct seller to apply to relevant Montana statutes; and

WHEREAS, ARM 24.11.831 narrowed the scope of the federal definition of direct seller; and

WHEREAS, an original purpose of this House Bill No. 561 was to codify the narrower definition of direct seller; and

WHEREAS, this House Bill No. 561 is the appropriate place to repeal Rule 24.11.831, Administrative Rules of Montana."

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1993 Amendment: Chapter 473 in definition of booth substituted "cosmetology salon" for "cosmetological establishment" and substituted "salon" for "shop"; substituted cosmetology salon as defined term for cosmetological establishment; in definition of manicuring salon substituted "salon" for "shop"; in definition of practice and teaching of cosmetology substituted "cosmetology salons" for "so-called hairdressing and beauty shops"; and made minor changes in style.

1989 Amendment: In first sentence of definition of practice and teaching of cosmetology, after "beauty shops", inserted "booths"; inserted definition of booth; and made minor changes in form.

1985 Amendments: Chapter 260 deleted former (1)(b) that read: “cosmetological artists who demonstrate cosmetological skills under the auspices of the state association of cosmetology or its affiliated units, whether at meetings or in licensed cosmetological establishments”; and made minor changes in punctuation and phraseology.

Chapter 602 in (1), after ““hairdressing”” inserted ““manicuring”” and after “arms” inserted “feet”; deleted former (1)(b); inserted (5) defining manicuring; and inserted (6) defining manicuring shop. Chapter 602 amendment effective January 1, 1986.

1981 Amendment: Substituted “department of commerce” for “department of professional and occupational licensing” in (4); changed internal references to the department and the board.

Administrative Rules

ARM 24.121.301 Definitions.

Attorney General's Opinions

Sex of Client Not Determinative — Exceptions: The sex of the client does not determine whether the service is barbering or cosmetology except as provided in 37-30-101 (now repealed). 34 A.G. Op. 58 (1972).

Shampooing, Dyeing Male's Hair: Only licensed barbers may singe, shampoo, apply tonic to, or dye the hair of a male person. 34 A.G. Op. 58 (1972). (See 37-31-102.)

37-31-102. Exemptions.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 192, L. 2023, inserted (5) providing exemption concerning natural hair braiding; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 338, L. 2023, inserted (4) providing exemption addressing barbering services at a correctional facility; and made minor changes in style. Amendment effective May 2, 2023.

2003 Amendments — Composite Section: Chapter 243 deleted former (3) that read: “(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair”; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 244 inserted (3) relating to barbering, cosmetology, and esthetics; and made minor changes in style. Amendment effective April 8, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

37-31-103. Purpose.

Compiler's Comments

2015 Amendment: Chapter 15 inserted reference to barbering nonchemical. Amendment effective October 1, 2015.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

Effective Date: This section is effective October 1, 2003.

Part 2

Board of Barbers and Cosmetologists

Part Administrative Rules

Title 24, chapter 121, subchapter 1, ARM Organizational rule.

Title 24, chapter 121, subchapter 2, ARM Procedural rules.

37-31-202. Compensation of members — expenses.

Compiler's Comments

1981 Amendment: Substituted section (see 1981 Session Law) for former text that read: “Each member of the board may receive as compensation for his services the sum of $25 per day for each day in actual attendance at any meeting of the board. In addition, each member shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the performance of official duties”.

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-31-203. Rulemaking powers.

Compiler's Comments

2021 Amendment: Chapter 544 in introductory clause after “The board shall,” substituted “by notice, hearing, and submission of views, adopt rules” for “prescribe rules”; in (2) at end substituted "or teach under this chapter" for "barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring or to teach barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring"; in (3) after "the regulation and instruction of" deleted "apprentices and"; in (4) substituted "the conduct of schools for students" for "the conduct of schools of barbering, barbering nonchemical, cosmetology, electrology, esthetics, and manicuring for apprentices and students"; and made minor changes in style. Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 in (2) in two places and in (4) inserted "barbering nonchemical"; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 467 in (2) after "qualification" deleted "examination" and after "and" substituted "licensure" for "registration"; in (5) after "qualification and" substituted "licensure" for "registration"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 in (2) inserted the practice of barbering and electrology and the teaching of barbering and electrology; deleted former (3) that read: "(3) the qualification and registration of applicants for manager-operator licenses"; in (4) inserted references to barbering and electrology; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendment: Chapter 305 in (2) inserted references to esthetics practice applicants and to manicuring or esthetics teaching applicants; in (5) inserted reference to esthetics schools; and made minor changes in style.

1989 Amendment: Inserted (6) regarding rules for booth rental licenses; and made minor changes in form.

1985 Amendment: In (2) after "practice", inserted "cosmetology or manicuring"; and in (5) after "schools of cosmetology", inserted "and schools of manicuring". Amendment effective January 1, 1986.

Statement of Intent: The statement of intent attached to Ch. 602, L. 1985, provided: "A statement of intent is required for this bill because it grants the board of cosmetologists the authority to make rules regarding the practice and teaching of manicuring. Currently Title 37, chapter 31, allows for the licensing of practitioners, teachers, and schools of cosmetology. It is the intent of this bill to license those persons wishing to practice manicuring apart from the practice of cosmetology and to require that only a person who holds a valid license to teach cosmetology may teach manicuring to such persons. It is contemplated that rules adopted by the board should address the following:

(1) types of programs required for practicing or teaching manicuring or operating a school of manicuring, such as classroom instruction and examination;

(2) standards for determining programs to be approved for the fulfillment of the requirements, such as adequacy of facilities, qualification of instructors, and course content;

(3) the number of hours of instruction required;

(4) the basic content and the passing grade for any examination required;

(5) preparation of a written application to be filed for examination and practice of manicuring; and

(6) methods of monitoring compliance."

Administrative Rules

Title 24, chapter 121, ARM Board of Barbers and Cosmetologists.

Case Notes

Administrative Rule More Stringent Than Statute Held Invalid: An administrative rule (adopted prior to the 1981 amendment reducing the period of apprenticeship from 1 year to 3 months, prior to the 1983 amendment providing for temporary certificates, and prior to the 1985 amendment eliminating the apprenticeship requirement) of the Board of Barbers requiring a year's apprenticeship served in a "commercial barbershop" prior to examination, as opposed to a year's apprenticeship served "under the immediate personal supervision of a licensed barber" as required by 37-30-301 (now repealed) and 37-30-305 (now repealed), is invalid because it does not satisfy the test as required in 2-4-305 that a rule must be "reasonably necessary to effectuate the purpose of the statute". Bd. of Barbers v. Big Sky College of Barber-Styling, 192 M 159, 626 P2d 1269, 38 St. Rep. 621 (1981).

Administrative Rule Exceeding Statutory Authority — Barbers: Administrative regulations are inconsistent with legislative guidelines if they engraft additional requirements on the statute that were not envisioned by the Legislature. Where the statutes (prior to enactment in 1983 of the requirement for an instructor's examination) set forth experience and character requirements for a barber school operator but did not mention an instructor's examination, an administrative rule requiring such an examination was void. Bell v. St., 182 M 21, 594 P2d 331, 36 St. Rep. 880 (1979).

Attorney General's Opinions

City Licensing: A city can license local aspects of interstate commerce if not a direct burden or impediment, but enterprises preempted by state regulation are not subject to city licensing. 37 A.G. Op. 100 (1977).

37-31-204. Sanitary rules.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Administrative Rules

Title 24, chapter 121, subchapter 15, ARM Sanitary standards.

Part 3
Licensing

37-31-301. Prohibited acts.

Compiler's Comments

2021 Amendment: Chapter 544 substituted current section text for former section text (see 2021 Session Law for former text). Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 throughout section inserted references to barbering nonchemical; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 243 in (1)(a) inserted references to barbering, electrology, esthetics, and manicuring; in (1)(b) inserted references to barbering and electrology; in (1)(c) substituted "salon or shop or a booth" for "cosmetology salon, manicuring salon, esthetics salon, or booth"; in (1)(d) inserted references to barbering and electrology; deleted former (1)(e) through (1)(g) (see 2003 Session Law for former text); in (2)(a) substituted "salon or shop" for "cosmetology salon" and inserted references to barbers and electrologists; in (2)(b) inserted references to schools of barbering, electrology, esthetics, and manicuring; in (2)(c) inserted references to barbering, electrology, esthetics, and manicuring, after "salon" inserted "or shop", and substituted "licensee" for "licensed operator"; in (2)(c)(i) in two places after "salon" inserted "or shop"; deleted former (2)(d) through (2)(f) (see 2003 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendments: Chapter 305 in (1)(b), (1)(d), and (2)(f) inserted reference to esthetics school; in (1)(c) inserted "esthetics salon"; inserted (1)(g) providing that it is unlawful to practice esthetics for compensation without a license; inserted (2)(e) prohibiting a person who owns, manages, or controls an esthetics salon to employ or use an unlicensed person as an esthetician; and made minor changes in style.

Chapter 472 in (2)(c)(ii) substituted "customer with a disability" for "handicapped".

1993 Amendments: Chapter 23 inserted (2)(c)(ii) to allow home-visit cosmetology for handicapped or homebound customers; and made minor changes in style.

Chapter 473 in two places in (1)(c) and once in (2)(a) and (2)(d) substituted "salon" for "shop"; in (1)(c), at end, deleted "beauty parlor"; in (2)(c) and (2)(c)(i), in two places, substituted "salon" for "establishment"; and made minor changes in style.

1989 Amendment: In (1)(c), after "manicuring shop", inserted "booth".

1985 Amendment: In (1)(b) and (1)(d), at end inserted "or school of manicuring"; in (1)(c), after "cosmetology shop" inserted "manicuring shop"; in (1)(e), after "manicuring" inserted "for compensation"; in (2)(a), at end after "cosmetologist" inserted "or manicurist"; inserted (2)(d) making it unlawful to employ unlicensed manicurist; and inserted (2)(e) making it unlawful to operate school without complying with 37-31-311. Amendment effective January 1, 1986.

37-31-302. License required to practice, teach, or operate salon, shop, booth, or school.

Compiler's Comments

2021 Amendment: Chapter 544 substituted current section text for former section text (see 2021 Session Law for former text). Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 throughout section after "barbering" inserted "barbering nonchemical"; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendments — Composite Section: Chapter 194 in (3) at end after "license" inserted "or a temporary operating permit as provided in 37-31-312". Amendment effective April 7, 2005.

Chapter 467 in (2) near end after "compensation" substituted "unless licensed" for "except under a certificate of registration"; and in (6) at end of first sentence before "license" deleted "certificate of registration and" and at end of second sentence before "fee" substituted "license" for "registration". Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 throughout section inserted references to barbering and electrology; in (2) at end inserted "as a school"; in (3) substituted "salon or shop" for "cosmetology salon, a manicuring salon, or an esthetics salon or practice cosmetology, manicuring, or esthetics"; in (4) near middle after "or teach" deleted "the art of"; in (6) near beginning inserted "or other legal entity" and substituted "a salon or shop shall apply" for "a cosmetology salon shall make an application"; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendments: Chapter 305 in (1) and (2) inserted reference to esthetics; in (3) inserted references to esthetics salon and to the practice of esthetics and near end, before "license", deleted "manager-operator"; in (4) inserted references to esthetics school, teaching of esthetics, and license to teach manicuring or esthetics; and made minor changes in style.

Chapter 492 in (6), in second sentence after "accompanied by the", deleted "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1993 Amendment: Chapter 473 in (3) substituted "cosmetology salon" for "beauty shop" and substituted "manicuring salon" for "manicuring shop"; in (6) substituted "cosmetology salon" for "cosmetological establishment"; and made minor changes in style.

1989 Amendment: Inserted (5) requiring a booth rental license; and made minor changes in form.

1985 Amendment: In (1) after "cosmetology", inserted "or practice or teach manicuring"; in (2) after "cosmetology", inserted "or manicuring"; in (3) substituted language providing that a person must have a manager-operator license to operate or manage a beauty or manicuring shop or to practice cosmetology or manicuring for former text that read: "No person may operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license"; and inserted (4) requiring license to operate school of or teach cosmetology or manicuring. Amendment effective January 1, 1986.

1981 Amendment: At the end of (3), deleted the requirement that a manager-operator license not be issued unless the applicant has been engaged in or teaching the practice of cosmetology in this state for 1 year.

37-31-303. Application for license to practice or teach.

Compiler's Comments

2021 Amendment: Chapter 544 near beginning after "license to practice or teach" substituted "under this chapter" for "barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring" and near end after "examination prescribed by the board" inserted "by rule". Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 inserted "barbering nonchemical". Amendment effective October 1, 2015.

2005 Amendment: Chapter 467 near middle after "application" substituted "provided by the department" for "prescribed by the board" and deleted former second sentence that read: "The license must be renewed in accordance with the provisions of 37-31-322"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 in first sentence substituted "a license to practice or teach barbering, cosmetology, electrology, esthetics, or manicuring" for "a license to practice or teach cosmetology or for a license to practice manicuring" and at end inserted "in order to qualify for licensure"; in second sentence substituted "in accordance with the provisions of" for "annually under"; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1989 Amendment: At end of first sentence, after "board", deleted "and given by the department, subject to 37-1-101".

1985 Amendment: At beginning substituted "An applicant for a license to practice or teach cosmetology or for a license to practice manicuring" for "The applicant". Amendment effective January 1, 1986.

Administrative Rules

ARM 24.121.601 Licensure by examination.
ARM 24.121.603 Out-of-state applicants.
ARM 24.121.607 Application for instructor license.

37-31-304. Qualifications of applicants for license to practice.

Compiler's Comments

2021 Amendment: Chapter 544 substituted current section text for former section text (see 2021 Session Law for former text). Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2017 Amendment: Chapter 260 in (2)(a)(ii) substituted "1,100 hours" for "1,500 hours"; in (2)(a)(iii) substituted "900 hours" for "1,000 hours"; and in (3)(a) substituted "1,500 hours" for "2,000 hours". Amendment effective October 1, 2017.

2015 Amendment: Chapter 15 inserted (1)(b) regarding a barbering nonchemical license; in (2)(a)(i), (2)(b), and (2)(c) after "barbering" inserted "or barbering nonchemical"; in (2)(a)(ii) substituted "An applicant to practice barbering" for "The applicant" and at end inserted "by rule"; inserted (2)(a)(iii) regarding requirements for an applicant to practice barbering nonchemical; in (3)(a) at end inserted "by rule"; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 467 in (2)(a) in fourth sentence after "hours in a" substituted "licensed" for "registered"; in (2)(b) near middle after "file" substituted "an application" for "a written application"; in (3)(a) in fourth sentence after "hours in a" substituted "licensed" for "registered"; in (3)(b) and in (4)(b) near middle after "file" substituted "an application" for "a written application"; in (5)(a) in second sentence in two places substituted reference to licensed school for reference to registered school; in (5)(b) near middle after "file" substituted "an application" for "a written application"; in (6)(a) in second sentence in two places substituted reference to licensed school for reference to registered school; in (6)(b) near middle after "file" substituted "an application" for "a written application"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 in (1) inserted first sentence providing that a person must obtain a license from the department before practicing barbering and inserted third sentence providing that a person must obtain a license from the department before practicing electrology; inserted (2)(a) stating the qualifications for the barbering examination and procedures for licensure; inserted (4)(a) stating the qualifications for the electrology examination; inserted (4)(b) requiring an application and an application fee and passage of a fitness examination; in (5)(a) in first sentence at end deleted "or a certificate of completion from a vocational-technical program"; in (5)(b) at end inserted "and pass an examination as to fitness to practice manicuring"; in (6)(a) in first sentence at end deleted "or a certificate of completion from a vocational-technical program" and in third sentence at end deleted "or a vocational-technical program certificate of completion"; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendment: Chapter 305 in (1), at end, inserted third sentence concerning requirement of a license to practice esthetics unless the person already has a license to practice cosmetology; and inserted (4) stating eligibility requirements for taking an exam to practice esthetics and providing that a qualified exam applicant must file a written exam application, deposit the required exam fee, and pass the exam.

1995 Amendment: Chapter 308 in two places in (3)(a) substituted "vocational-technical program" for "vocational-technical center". Amendment effective July 1, 1995.

1993 Amendment: Chapter 473 in (2)(a), near beginning of first sentence after "moral character, and must" deleted "have completed 2 years of high school or" and after "possess" inserted "a high school diploma or", inserted second and third sentences relating to the educational exception, and in fourth sentence, before "course of study", deleted "continuous", in two places substituted "cosmetology school" for "beauty school", and after "registered cosmetology school" deleted "which course of study has been distributed over a period of not less than 10 months or more than 14 months"; in (3)(a), at end, inserted last two sentences relating to the exception for the educational requirement; and made minor changes in style.

1989 Amendment: In first sentence of (2)(a), after "years of age", deleted "a graduate of the 8th grade" and after "character" inserted "and must have completed 2 years of high school or possess the equivalent of a high school diploma recognized by the superintendent of public instruction", and at end of (2)(a), after "board", deleted "of public education".

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

1985 Amendments: Chapters 260 and 602 near middle of (2)(b) after "application to take the examination", deleted "accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the department".

Chapter 602 in (1) substituted entire text (see 1985 Session Law) for former text that read: "Before one may practice or teach cosmetology or a person, firm, partnership, or corporation may operate a school of cosmetology, the person, firm, partnership, or corporation must obtain a license or certificate of registration from the department"; in (2)(b) at beginning substituted "A person qualified under subsection (2)(a)" for "The person qualified"; inserted (3)(a) stating eligibility requirements to take manicurist's examination; and inserted (3)(b) requiring applicant to file written application for examination and to pay fee. Chapter 602 amendment effective January 1, 1986.

Administrative Rules

ARM 24.121.403 General requirements.
ARM 24.121.601 Licensure by examination.
ARM 24.121.603 Out-of-state applicants.
ARM 24.121.607 Application for instructor license.
ARM 24.121.807 School curricula.

37-31-305. Qualifications of applicants for license to teach.

Compiler's Comments

2021 Amendment: Chapter 544 substituted current section text for former section text (see 2021 Session Law for former text). Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 in (1) and (2) after "barbering" inserted "barbering nonchemical". Amendment effective October 1, 2015.

2013 Amendment: Chapter 102 inserted (2)(d)(ii) regarding experience and time for completion of coursework; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 100 in (1) near middle after "may teach" substituted reference to instruction in either of five types of schools for "manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics or to teach cosmetology" and at end deleted "cosmetology"; in (2) near beginning after "eligible" substituted reference to license to teach any of five subjects for "to take an examination to obtain a license to teach cosmetology"; in (2)(b) after "practice" deleted "cosmetology" and after "department" substituted reference to particular teaching area for "and have received a diploma from a licensed school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training"; in (2)(c) substituted current text for "have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher's examination"; inserted (2)(d) regarding receipt of diploma; deleted former (3) through (8) relating to qualifications for teaching manicuring, esthetics, barbering, and electrology (see 2011 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendment: Chapter 467 in (1)(b)(i) near middle after "from a" substituted "licensed" for "registered"; and in (4)(b)(i), (6)(b)(i), and (7)(b)(i) near middle after "from a" deleted "registered". Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 inserted (7) and (8) providing criteria for eligibility to take an examination to obtain a license to teach barbering or electrology; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendment: Chapter 305 in (1) inserted two references to esthetics; inserted (3) requiring a license to teach manicuring to a person seeking only to be licensed to practice manicuring unless the teacher is already licensed to teach cosmetology; inserted (4) stating eligibility requirements for taking an exam to teach manicuring; inserted (5) requiring a license to teach esthetics to a person seeking only to be licensed to practice esthetics unless the teacher is already licensed to teach cosmetology; inserted (6) stating eligibility requirements for taking an exam to teach esthetics; and made minor changes in style.

1993 Amendment: Chapter 473 in (2)(b)(ii) substituted "cosmetologist" for "beauty operator"; and made minor changes in style.

1985 Amendments: Chapter 260 in (2)(b)(i) after "department", deleted "been actively engaged as a beauty operator for 1 continuous year immediately prior to taking the examination", and increased hours of training from 500 to 650.

Chapter 602 in (1) and introductory clause of (2), substituted language (see 1985 Session Law) for former text that read: "Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:"; renumbered subsections; and in (2)(b)(i) made same deletion as Ch. 260. Chapter 602 amendment effective January 1, 1986.

1981 Amendment: Changed "an operator's license" to "a license" at the beginning of (2)(a).

37-31-308. Exemption for persons with disabilities.

Compiler's Comments

2021 Amendment: Chapter 544 in first sentence after "physical disability who is trained" substituted "to practice under this chapter" for "for barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring" and in second sentence after "required training in a school" deleted "of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring". Amendment effective October 1, 2021.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 in two places inserted "barbering nonchemical". Amendment effective October 1, 2015.

2005 Amendment: Chapter 467 deleted former (1) that read: "(1) Examinations for a license to practice barbering, cosmetology, electrology, esthetics, or manicuring or to teach barbering, cosmetology, electrology, esthetics, or manicuring must be held at places and times specified by the board. The examinations may not be confined to a specific method or system. The board may contract with an outside agency for examination and grading services"; near end of second sentence after "necessary" deleted "certificate or"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 throughout section inserted references to barbering and electrology; in (1) deleted former second sentence that read: "The examinations must be supervised by the board", inserted third sentence allowing the board to contract for examination and grading services, and deleted last sentence that read: "The examinations must be conducted by persons who hold current licenses to practice in the profession for which the applicant is being examined"; deleted former (2) through (4) that read: "(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring or a license to practice esthetics shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology, manicuring, or esthetics shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit"; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendments: Chapter 305 in (1) inserted references to an esthetics practice license and to a manicuring or esthetics teaching license; in (3) inserted "or a license to practice esthetics"; in (4) inserted reference to manicuring and esthetics teaching licenses; in (5), near beginning and near end, inserted references to esthetics; and made minor changes in style.

Chapter 472 in (5), at beginning, substituted "Persons with physical disabilities" for "Physically handicapped persons".

1995 Amendment: Chapter 546 in (5), in three places, substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 473 in (5), near end, substituted "cosmetology school" for "beauty school"; and made minor changes in style.

1989 Amendment: In second sentence of (1) substituted "supervised" for "conducted" and substituted "board" for "department, subject to 37-1-101" and inserted fourth sentence relating to persons who conduct examinations.

1985 Amendments: Chapters 260 and 602 in (1) in first sentence, after "practice", inserted "or to teach cosmetology", near middle of sentence, after "held at", substituted "places and times" for "a place and time", at end of sentence after "board", deleted "at least two times a year and not more than five times a year and for teacher's license once each year"; in (2) after "examination", inserted "for a license to practice cosmetology"; in (2)(b) before "training", deleted "teacher"; and inserted (4) requiring applicant who twice fails examination for license to teach cosmetology to reapply.

Chapter 602 in (1) in first sentence, after "license to practice", inserted "cosmetology or manicuring"; inserted (3) requiring applicant who twice fails examination for manicurist's license to meet additional requirements before reapplying; in (5), near beginning, after "cosmetology", inserted "or manicuring"; and near end, after "required", substituted "training in a beauty school or manicuring school" for "apprenticeship or training in a shop or beauty school". Chapter 602 amendment effective January 1, 1986.

1981 Amendment: Substituted "a license to practice" for "operator's license" near the beginning of the first sentence of (1).

37-31-309. Booth rental license.

Compiler's Comments

2011 Amendment: Chapter 100 inserted (2) regarding termination of booth rental license; and made minor changes in style. Amendment effective October 1, 2011.

37-31-311. Schools — license — requirements — bond — curriculum.

Compiler's Comments

2021 Amendment: Chapter 544 substituted current section text for former section text (see 2021 Session Law for former text). Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2017 Amendment: Chapter 260 in (2)(c) substituted "1,100 hours" for "1,500 hours" and substituted "900 hours" for "1,000 hours"; and in (3)(c) substituted "1,500 hours" for "2,000 hours". Amendment effective October 1, 2017.

2015 Amendment: Chapter 15 throughout section inserted references to barbering nonchemical; in (2)(c) inserted "for barbering and not less than 1,000 hours for barbering nonchemical"; in (2)(c), (3)(c), (4), (5)(b), and (10) at end inserted "by rule"; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 467 in (1) near end of first sentence after "unless" substituted "licensed by" for "a certificate of registration has been first obtained from" and in second sentence at beginning after "for the" substituted "license" for "certificate" and at end after "department on" substituted "an approved form" for "a form prescribed by the board"; in (2) after "granted a" substituted "license" for "certificate of registration"; in (2)(c) in first sentence after "hours and" deleted "prescribes"; in (3) after "granted a" substituted "license" for "certificate of registration"; in (3)(c) in first sentence after "hours and" deleted "prescribes"; in (4) after "granted a" substituted "license" for "certificate of registration", after "term" deleted "prescribes", and after "instruction" inserted "prescribed by the board"; in (5) after "granted a" substituted "license" for "certificate of registration"; in (5)(b) after "term and" deleted "prescribes"; in (6) after "granted a" substituted "license" for "certificate of registration"; in (7) at beginning after "Licenses" deleted "or certificates of registration"; in (12) near middle after "training in" substituted "licensed" for "registered"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 in (1) in first sentence inserted "or other legal entity" and inserted references to barbering and electrology; inserted (2) providing requirements for a school for teaching barbering in order to be granted a certificate of registration; in (3)(b) and (5)(a) before "teaching" deleted "ready and full"; in (3)(e) at beginning substituted "It does not" for "An owner or person in charge of a school of cosmetology may not"; inserted (4) providing that an electrology school may not be granted a certificate of registration unless it has a school term, course of practical training and technical instruction, and equipment needed for teaching as prescribed by the board; in (5)(b) inserted "prescribes"; in (5)(c) at beginning substituted "It does not" for "An owner or person in charge of a school of manicuring may not"; in (6)(c) at beginning substituted "It does not" for "An owner or person in charge of a school of esthetics may not"; in (7), (8), (9), (10), (11), and (12) inserted references to barbering and electrology; in (10) near beginning inserted "or other legal entity" and near end substituted "bond or other security" for "good and sufficient bond"; in (11) substituted "salon or shop" for "cosmetology, manicuring, or esthetics salon"; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendment: Chapter 305 in (1), in first sentence, inserted reference to operation of a school to teach esthetics for compensation; inserted (4) stating the requirements for a certificate of registration for a school for teaching esthetics; in (5), (6), (7), (8), and (9) inserted references to esthetics; in (10) inserted references to manicuring and esthetics; and made minor changes in style.

1993 Amendment: Chapter 473 in (8) substituted "cosmetology salon" for "beauty shop" and substituted "manicuring salon" for "manicuring shop"; and made minor changes in style.

1985 Amendment: In (1) in first sentence, after "cosmetology for compensation", inserted "or for the purpose of teaching manicuring for compensation"; inserted (3) stating requirements for certificate of registration for school for teaching manicuring; in (4) after "registration", inserted "for schools of cosmetology and schools of manicuring"; in (5), after "practice cosmetology" inserted "or manicuring" and after "a school" inserted "of cosmetology or a school of manicuring"; in (6) after "schools of cosmetology" inserted "and schools of manicuring"; in (7) after "a school" inserted "of cosmetology or a school of manicuring"; and in (8), after "beauty shop" inserted "or manicuring shop" and after "school of cosmetology" inserted "or school of manicuring". Amendment effective January 1, 1986.

Administrative Rules

ARM 24.121.605 Application for school licensure.

ARM 24.121.611 Examination requirements and process.

Title 24, chapter 121, subchapter 8, ARM School facility and operation.

37-31-312. Inspection — temporary permits.

Compiler's Comments

2021 Amendment: Chapter 544 in (1) in second sentence before "during business hours" deleted "of barbering, school of barbering nonchemical, school of cosmetology, school of electrology, school of esthetics, or school of manicuring"; and made minor changes in style. Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 in (1) inserted "school of barbering nonchemical". Amendment effective October 1, 2015.

2011 Amendment: Chapter 100 in (3) in first sentence after "shop to operate" substituted current text for "for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever comes first" and inserted second sentence regarding granting of license if shop fails to respond or indicate corrections of violations. Amendment effective October 1, 2011.

2005 Amendments — Composite Section: Chapter 194 deleted former (2) that read: "(2) Upon application for a license, a salon or shop shall pay an initial inspection fee prescribed by the board"; at beginning of (2) inserted "When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board"; in (2)(a) near middle after "grant to a" inserted "new", after "shop" deleted "upon payment of the initial inspection fee", after "temporary" inserted "operating", and after "permit" deleted "authorizing the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever occurs first"; inserted (2)(b) requiring the board to authorize a temporary permit; inserted (3) limiting operation under a temporary permit; and made minor changes in style. Amendment effective April 7, 2005.

Chapter 467 in (1) at end of second sentence after "licensee's" inserted "or school's" and after "license" deleted "or a school's certificate of registration". Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 in (1) in first sentence substituted "salons or shops" for "cosmetology salons" and in second sentence substituted "salon or shop" for "cosmetology salon, manicuring salon, esthetics salon", inserted references to schools of barbering and electrology, after "refusal of a licensee" inserted "or school", and at end substituted "a licensee's license or a school's certificate of registration" for "the license"; in (2), in (3) in first sentence in two places, and in (4) substituted "salon or shop" for reference to cosmetology, manicuring, or esthetics salon; in (4) substituted "require the inspector or inspectors" for "cause an inspector"; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendment: Chapter 305 in (1), in second sentence, inserted references to esthetics salon and school of esthetics; in (2), (3), and (4) inserted references to esthetics salons; and made minor changes in style.

1993 Amendment: Chapter 473 throughout section substituted references to cosmetology salons for references to beauty parlors and cosmetological establishments and substituted "manicuring salon" for "manicuring shop"; and made minor changes in style.

1991 Amendment: In (1), in first sentence after second "department", inserted "in cooperation with the board"; in (4) substituted "department" for "board" and after "shall" inserted "cause an inspector, appointed as provided in subsection (1), to". Amendment effective July 1, 1991.

1989 Amendment: In second sentence of (1), after "manicuring shop", inserted "booth".

1985 Amendments: Chapters 260 and 602 in (1) in first sentence, after "inspectors", deleted "who are licensed to practice under this chapter".

Chapter 602 throughout section inserted references to manicuring shop; in (1), in second sentence, after "school of cosmetology", inserted "or school of manicuring"; and near end of (4) substituted "cosmetological establishment" for "cosmetology establishment". Chapter 602 amendment effective January 1, 1986.

1981 Amendments: Chapter 106 added (4) requiring Board to inspect annually each cosmetology establishment and manicuring shop.

Chapter 345 substituted "an initial inspection fee prescribed by the board" for "an initial inspection fee of $25" at the end of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.121.407 Premises and general requirements.
ARM 24.121.801 Inspection — school layout.
Title 24, chapter 121, subchapter 15, ARM Sanitary standards.

37-31-323. Fees.

Compiler's Comments

2021 Amendment: Chapter 544 in (3) at end substituted "to practice under this chapter" for "for the practice or teaching of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring"; and made minor changes in style. Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 in (1) at end inserted "by rule"; and in (3) inserted "barbering nonchemical". Amendment effective October 1, 2015.

2005 Amendment: Chapter 467 in (1) near beginning after "licenses" deleted "and certificates of registration"; in (2) near beginning after "license" deleted "and registration"; and in (3) near beginning after "license" deleted "or registration". Amendment effective July 1, 2005.

2003 Amendment: Chapter 243 in (2) after "must be paid" deleted "annually"; in (3) at end inserted references to barbering, electrology, esthetics, and manicuring; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1981 Amendments: Chapter 106, deleted subsection (1)(e) relating to a license fee for an operator.

Chapter 345, substituted "shall be paid to the department in amounts prescribed by the board" for "shall be paid to the department not to exceed the following respective amounts prescribed by the board" in the first sentence of (1); and deleted subsections (1)(a) through (1)(n) which set maximum fees for various licenses and certificates of registration.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.121.401 Fees.

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-31-324. Deposit of fees.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.

Compiler's Comments

2021 Amendment: Chapter 544 in (1)(a) after "operating a salon, shop" inserted "booth" and after "school" deleted "of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring"; in (1)(b) after "comply with the sanitary rules" substituted "prescribed by the board by rule" for "adopted by the board", after "regulation of salons, shops" inserted "booths", and after "schools" deleted "of barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring"; and made minor changes in style. Amendment effective January 1, 2022.

Saving Clause: Section 15, Ch. 544, L. 2021, was a saving clause.

Severability: Section 16, Ch. 544, L. 2021, was a severability clause.

2015 Amendment: Chapter 15 in (1)(a) and (1)(b) inserted "barbering nonchemical". Amendment effective October 1, 2015.

2007 Amendment: Chapter 44 in (1)(f) at beginning after "permitting a" deleted "certificate of registration or". Amendment effective October 1, 2007.

2003 Amendment: Chapter 243 in (1)(a) inserted "or other legal entity", substituted "salon or shop" for "cosmetology salon, manicuring salon, esthetics salon", and near end inserted references to barbering and electrology schools; in (1)(b) substituted "salons or shops" for "cosmetology salons, manicuring salons, esthetics salons" and inserted references to barbering and electrology schools; in (1)(e) after "the use of" deleted "morphine or"; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendment: Chapter 305 in (1)(a) and (1)(b) inserted references to esthetics salon and school of esthetics; and made minor changes in style.

1995 Amendments: Chapter 418 in (1)(b) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(b) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 473 in (1)(a) substituted "cosmetology salon" for "cosmetological establishment" and substituted "manicuring salon" for "manicuring shop"; in (1)(b) substituted "cosmetology salons" for "cosmetological establishments" and substituted "manicuring salons" for "manicuring shops"; and made minor changes in style.

1985 Amendment: In (1)(a) and (1)(b), before "school(s) of cosmetology" inserted "manicuring shop(s)" and after "school(s) of cosmetology" inserted "or school(s) of manicuring". Amendment effective January 1, 1986.

CHAPTER 33
MASSAGE THERAPY

Chapter Compiler's Comments

Effective Date: Section 12, Ch. 451, L. 2009, provided that this chapter is effective on passage and approval. Approved May 5, 2009.

Chapter Administrative Rules

Title 24, chapter 155, ARM Board of Massage Therapy.

Part 4
General Provisions

37-33-404. Exemptions — rules.

Compiler's Comments

2015 Amendment: Chapter 15 in (1) inserted "barbering nonchemical". Amendment effective October 1, 2015.

37-33-406. Massage therapy businesses — requirements.

Compiler's Comments

2021 Amendment: Chapter 99 in (2)(a) substituted "a designee, a government official having jurisdiction, or a law enforcement officer" for "a local designee, a local government official having jurisdiction, or a local law enforcement officer". Amendment effective March 26, 2021.

Termination Provision Repealed: Section 2, Ch. 99, L. 2021, repealed sec. 6, Ch. 419, L. 2019, which terminated this section June 30, 2023. Effective March 26, 2021.

Effective Date: Section 4(1), Ch. 419, L. 2019, provided that this section is effective October 1, 2019.

Termination: Section 6, Ch. 419, L. 2019, provided that this section terminates June 30, 2023.

Severability: Section 3, Ch. 419, L. 2019, was a severability clause.

CHAPTER 34
CLINICAL LABORATORY SCIENCE PRACTITIONERS

Chapter Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 345, L. 1993, provided: "A statement of intent is needed for this bill because it establishes a board of clinical laboratory science practitioners and gives the board rulemaking authority. The board is required to adopt rules to establish licensing and certification procedures, educational requirements for licensure, and continuing education requirements. The board is also required to establish rules for the renewal, suspension, and revocation of licenses. The board shall establish an investigation and hearing procedure for handling complaints and shall set fees for administration of the board's duties. The fees must be commensurate with the costs of administration. The board shall also adopt rules implementing the requirement that a supervisor of a clinical laboratory technician must be accessible at all times that testing is being performed in order to provide onsite, telephonic, or electronic consultation."

Severability: Section 14, Ch. 345, L. 1993, was a severability clause.

Part 1
General

37-34-103. Definitions.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "2-15-1701" for "2-15-1801". Amendment effective July 1, 2001.

Part 2
Board of Clinical Laboratory Science Practitioners

Part Administrative Rules

Title 24, chapter 129, subchapter 1, ARM Organizational rule.

Title 24, chapter 129, subchapter 2, ARM Clinical laboratory science practitioners — procedural rules.

37-34-201. Powers and duties of board — rulemaking authority.

Compiler's Comments

2005 Amendment: Chapter 467 in (1)(a) after "described in" inserted "Title 37, chapter 1, and"; in (3)(a) after "development of" deleted "a license application procedure and"; deleted former (3)(b) that read: "(b) the establishment of license fees commensurate with actual costs"; deleted former (3)(d) through (3)(f) that read: "(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses consistent with the provisions in 37-1-138;

(e) the adoption of disciplinary standards for licensees;

(f) the establishment of hearing procedures"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 in (3)(d) at end inserted "consistent with the provisions in 37-1-138". Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1995 Amendment: Chapter 429 in (3)(f), before "hearing", deleted "investigatory and" and after "procedures" deleted "for processing complaints received by the board"; deleted former (3)(g) that read: "(g) the establishment of continuing education requirements of at least 14 hours annually for license renewal for clinical laboratory practitioners"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Effective Date: Section 16, Ch. 345, L. 1993, provided that this section was effective on passage and approval. Approved April 16, 1993.

Part 3
Licensing

Part Administrative Rules

Title 24, chapter 129, subchapter 6, ARM Licensing.

37-34-301. License required.

Administrative Rules

ARM 24.129.405 Inspections.
ARM 24.129.2101 Continuing education requirements.

37-34-305. Licensure application procedures.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) near middle after "board" deleted "upon the forms prescribed and furnished by the board"; in (2) near beginning after "fee, and" substituted "department" for "board"; deleted former (3) and (4) that read: "(3) A license issued under this chapter must be renewed on or before the date set by department rule.

(4) Except for the assessment provided in 37-1-101(6), money paid for application, license, and license renewal fees must be deposited in the state special revenue fund for use by the board"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 at end of (3) substituted "on or before the date set by department rule" for "by May 1 of each year".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

CHAPTER 36
ATHLETIC TRAINERS

Chapter Compiler's Comments

Effective Date: This chapter is effective October 1, 2007.

Chapter Administrative Rules

Title 24, chapter 118, ARM Board of Athletic Trainers.

Part 2
Regulations — Penalties

37-36-201. Qualifications — temporary license — exemption from examination.

Administrative Rules

ARM 24.118.402 Athletic trainers — fee schedule.

37-36-202. License — revocation.

Compiler's Comments

2009 Amendment: Chapter 109 in (1) at end after "valid for" substituted "1 year" for "3 years". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

CHAPTER 39
BEHAVIORAL HEALTH

Chapter Compiler's Comments

Effective Date: This chapter is effective October 1, 2023.

Part 2
Licensing

37-39-203. Licensure and certification reciprocity for out-of-state applicants.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

2023 Enactment — Coordination: The enactment of this section by sec. 1, Ch. 590, L. 2023, was replaced by sec. 34, Ch. 713, L. 2023, a coordination section.

Part 3
License Scope of Practice and Qualifications

37-39-308. Social work license required — qualifications.

Compiler's Comments

2023 Enactment — Coordination: The enactment of this section by sec. 10, Ch. 713, L. 2023, was amended by sec. 3, Ch. 726, L. 2023, a coordination section.

37-39-310. Addiction counseling license required — qualifications.

Compiler's Comments

2023 Enactment — Coordination: The enactment of this section by sec. 12, Ch. 713, L. 2023, was amended by sec. 2, Ch. 756, L. 2023, a coordination section. Section 2, Ch. 756, purported to be effective May 22, 2023, but the enactment of this section was not effective until October 1, 2023.

CHAPTER 40
SANITARIANS

Part 1
General

37-40-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 484, L. 2023. Amendment effective October 1, 2023.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In definition of practice of profession of sanitarian substituted present language (see 1991 Session Law for text) for "planning, inspectional, educational, or enforcement duties in the field of environmental sanitation"; and inserted definition of sanitarian-in-training. Amendment effective July 1, 1991.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-40-102. Exemptions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment — Phrase Change: Section 14, Ch. 108, L. 1995, directed the Code Commissioner to change references in the MCA to engineer-in-training to engineer intern. In this section, the Code Commissioner has made the change in (2).

1991 Amendment: In introductory clause, after "chapter", deleted "unless practicing the profession of sanitarian"; in (2), after "is a", deleted "sanitary engineer, public health engineer"; inserted (5) exempting a state employee unless required to be registered as a sanitarian; and inserted (6) exempting a person not employed by or under contract with a governmental entity. Amendment effective July 1, 1991.

Part 2
Rulemaking

37-40-203. Rulemaking power.

Administrative Rules

Title 24, chapter 217, ARM Sanitarians program.

Part 3
Licensing

37-40-301. License required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Near beginning, after "practice", inserted "or offer to practice", after "sanitarian" inserted "as defined in this chapter", before the second "sanitarian" inserted "licensed", and after the second "licensed" inserted "and registered"; and made minor changes in style. Amendment effective July 1, 1991.

37-40-302. Application — examination — certificate.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 484, L. 2023. Amendment effective October 1, 2023.

2005 Amendment: Chapter 467 in (1) at end after "form" substituted "furnished by the department" for "prescribed by the board"; in (2) at end after "college" deleted "and shall pass an examination given at a time and place set by the board. The board shall establish procedures for examination and determination of passing scores by rule"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (2) near middle of first sentence substituted "an examination" for "a written examination"; at end of (3) deleted "upon payment of the required fee"; and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendment: Chapter 16 in (2), in first sentence after "examination", deleted "and an oral interview"; and made minor changes in style.

1991 Amendment: In (2), near end of first sentence before "examination", inserted "a written" and after "examination" inserted "and an oral interview" and inserted last sentence concerning procedures and passing scores for the examination; and made minor change in style. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 545, L. 1991, provided: "A statement of intent is required for this bill because [sections 4 and 6] [37-40-203 and 37-40-302] grant rulemaking authority to the board of sanitarians. It is the intent of the legislature that the board of sanitarians adopt rules:

(1) establishing standards of professional conduct in order to maintain the integrity, dignity, and competency of the profession;

(2) governing the conduct of matters before the board including meetings, recordkeeping, rulemaking, hearings, and other matters;

(3) establishing educational equivalency requirements to determine qualifications for licensure;

(4) establishing procedures and passing scores for examinations for applicants for licensure;

(5) establishing requirements for continuing education to maintain professional knowledge and competence as a condition of continued licensure;

(6) defining qualifications for sanitarian-in-training status and issuance of a permit;

(7) establishing a schedule of nonrefundable fees to cover costs incurred in regulation of the profession; and

(8) defining unprofessional conduct as a basis for disciplinary action."

1981 Amendment: Substituted "possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college" for "meet minimum standards set by the board" in (2); deleted "but not to exceed 1 year past the date of issuance of the probationary certificate described in subsection (3) below" at the end of (2); deleted (3) allowing for issuance of probationary certificate on application and payment of fee.

CHAPTER 42
WATER TREATMENT PLANT OPERATORS

Chapter Compiler's Comments

Preamble: The preamble to Ch. 243, L. 1983, provided: "WHEREAS, the sunset law, sections 2-8-103 [repealed, Ch. 321, L. 1983] and 2-8-112, MCA, terminates the Board of Water and Wastewater Operators and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation the Legislative Audit Committee recommends that the Board of Water and Wastewater Operators be reestablished as the Water and Wastewater Operators' Advisory Council." See State of Montana Report to the Legislature, Sunset Review Board of Water and Wastewater Operators, 81-SS-10, Legislative Auditor, 1983.

Severability Clause: Section 13, Ch. 239, L. 1967, was a severability clause. Section 4, Ch. 306, L. 1971, was a severability clause.

Chapter Administrative Rules

Title 17, chapter 40, ARM Water treatment systems and operators.

Part 1
General

37-42-101. Purpose.

Compiler's Comments

1995 Amendment: Chapter 488 in first sentence, after "Montana's", inserted "state" and in second sentence, after "to", substituted "protect the public health and safety" for "control" and at end deleted "in order to protect the public health and safety"; and made minor changes in style.

37-42-102. Definitions.

Compiler's Comments

2007 Amendment: Chapter 423 inserted definitions of industrial waste and industrial waste discharge system; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendments — Composite Section: Chapter 79 inserted definition of board; and made minor changes in style. Amendment effective March 20, 2001.

Chapter 213 substituted definition of community water system for former language that read: "means the term as defined in 75-6-102"; in definition of wastewater treatment plant deleted former (b) that read: "(b) discharges an effluent directly into state waters"; and made minor changes in style. Amendment effective April 6, 2001.

Preamble: The preamble attached to Ch. 79 L. 2001, provided: "WHEREAS, certain environmental statutes administered by the Montana Department of Environmental Quality provide that a person aggrieved by a decision of the Department may appeal that decision to the Director of the Department; and

WHEREAS, the possibility of an appeal prevents the Director from becoming involved in certain Department decisions that are subject to appeal to the Director; and

WHEREAS, section 82-4-427, MCA, states that a contested case hearing requested under The Opencut Mining Act must be held within 30 days after the hearing is requested; and

WHEREAS, it is difficult for the Department to conduct a contested case hearing under that Act within 30 days after the hearing is requested; and

WHEREAS, certain revisions to statutes administered by the Department are necessary for clarity and consistency and to conform the statutes to current drafting style."

Preamble: The preamble attached to Ch. 213, L. 2001, provided: "WHEREAS, section 37-42-102(8), MCA, currently contains three elements in the definition of a "wastewater treatment plant" and defines it as a plant that treats wastewater, that discharges an effluent directly into state waters, and that is either an industrial waste discharge system or a public sewage system as defined in section 75-6-102, MCA; and

WHEREAS, section 75-6-102(9), MCA, already defines "industrial waste discharge system" as a system that discharges industrial waste into state waters; and

WHEREAS, the current definition of "wastewater treatment plant" in section 37-42-102(8), MCA, which includes only systems that discharge directly to state waters, may restrict regulation more than is desired so that some public sewage systems might not be required to have a certified operator; and

WHEREAS, the Legislature wishes to require public sewage systems, whether or not they discharge to state waters, and systems that process industrial waste water and discharge to state waters to be operated by certified operators; and

WHEREAS, removing the requirement that a discharge to state waters is necessary from the definition of a "wastewater treatment plant" would clarify that intent; and

WHEREAS, section 37-42-103, MCA, exempts public water supplies and sewage systems serving fewer than 15 or more service connections or 25 or more people for at least 60 days of the calendar year from the requirement of having a certified operator in responsible charge; and

WHEREAS, a water supply or sewage system that does not serve 15 service connections or 25 or more people for at least 60 days of the calendar year is already excluded from the definition of a "public sewage system" and the definition of a "public water supply system" under section 75-6-102(15) and (16), MCA, and is therefore not required to have a certified operator; and

WHEREAS, industrial waste discharge systems generally do not serve 15 or more service connections or 25 or more people for at least 60 days of the calendar year, and the exemption in section 37-42-103, MCA, might be interpreted to exempt industrial waste discharge systems from needing to have certified operators; and

WHEREAS, repeal of section 37-42-103, MCA, would clarify that industrial waste discharge systems that discharge an effluent to state waters require certified operators."

Saving Clause: Section 18, Ch. 79, L. 2001, was a saving clause.

Section 3, Ch. 213, L. 2001, was a saving clause.

1997 Amendment: Chapter 538 inserted definition of nontransient noncommunity water system; at end of definition of water distribution system and at end of definition of water supply system inserted "or a nontransient noncommunity water system"; and made minor changes in style. Amendment effective May 5, 1997.

Saving Clause: Section 29(1), Ch. 538, L. 1997, was a saving clause.

Applicability: Section 30(2), Ch. 538, L. 1997, provided: "[Section 1] [37-42-102] applies to the licensing of nontransient noncommunity water system operators on or after July 1, 1998."

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of environmental quality provided for in 2-15-3501" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 488 inserted definition of community water system; deleted definition of Montana's waters that read: ""Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state), wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned"; inserted definition of state waters; in definition of wastewater treatment plant, at end of (b), deleted "which serves 10 or more families or serves an industry employing 10 or more persons" and inserted (c) to include part of an industrial waste discharge system or public sewer system; in definition of water distribution system, at end, substituted "that is part of a community water system" for "which serves 10 or more families or supplies an industry employing 10 or more persons"; in definition of water supply system, at end, substituted "that is part of a community water system" for "which serves 10 or more families or serves an industry employing 10 or more persons"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

1983 Amendment: Substituted (2), defining council, for former (1), which read: ""Board" means the board of water and wastewater operators provided for in 2-15-2105."

Administrative Rules

ARM 17.40.201 Definitions.

37-42-104. Classification of treatment plants and distribution systems.

Administrative Rules

ARM 17.40.201 Definitions.
ARM 17.40.202 Classification of systems.
ARM 17.40.208 Certified operator in charge of system — exceptions.

Part 2
Water and Wastewater Operators' Advisory Council

Part Administrative Rules

Title 17, chapter 40, subchapter 1, ARM Water and Wastewater Operators Advisory Council — Council organization.

37-42-201. Meetings — compensation of members — expenses.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Substituted "council" for "board" throughout section; deleted former (2), which read: "The board shall hold at least one examination each year for the purpose of examining candidates for certification, at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the department for certification."; at beginning of (2), changed "Additional meetings" to "Meetings"; after "carry out" inserted "its function to advise the department under"; deleted former (4), which read: "The members of the board shall receive a fee of $20 per day while in session, plus travel expenses as provided for in 2-18-501 through 2-18-503, including travel while discharging their official duties."; and inserted (3) providing for reimbursement and compensation of council members.

Administrative Rules

ARM 17.40.101 Council organization.
ARM 17.40.206 Examinations.
ARM 17.40.207 Experience and education.

37-42-202. Rulemaking power — examinations — continuing education requirements.

Compiler's Comments

1983 Amendment: Near beginning of (1), substituted "department" for "board"; deleted former second sentence of (1), which read: "Before the rules are effective, they shall be approved by the department."; inserted (2) requiring Department to hold at least one examination each year; and inserted (3) allowing Board to establish continuing education requirements.

Statement of Intent: The statement of intent attached to Ch. 243, L. 1983, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Health and Environmental Sciences [now Department of Environmental Quality] to adopt rules prescribing:

(1) examination procedures for certifying water and wastewater operators;
(2) continuing education requirements for certified water and wastewater operators;
(3) requirements for issuance of temporary certificates to water and wastewater operators.

As prescribed in section 6 of the bill, the examination procedures for certifying operators shall constitute a reasonable basis for determining whether or not an applicant is qualified to operate a water or wastewater plant. The continuing education requirements shall provide a fair and reasonable basis for ensuring that certified operators remain qualified.

The requirements for issuance of a temporary certificate as prescribed in section 8 [9] shall include a list of elements constituting "good cause"."

Existing Rules: Section 16, Ch. 243, L. 1983, provided: "Rules adopted by the board of water and wastewater operators in effect on [March 28, 1983] continue in effect under the administration of the department of health and environmental sciences [now department of environmental quality] until amended or repealed by the department. If amended, a rule continues in effect in its amended form."

Administrative Rules

Title 17, chapter 40, ARM Water treatment systems and operators.

37-42-203. Duty to advise and assist department.

Compiler's Comments

1983 Amendment: Substituted "council" for "board" twice.

Part 3
Licensing

37-42-301. Department to certify operators.

Compiler's Comments

1983 Amendment: At end of (1), deleted "after considering the recommendations of the board".

Administrative Rules

ARM 17.40.203 Certification of operators.
ARM 17.40.206 Examinations.

37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates — exception.

Compiler's Comments

1999 Amendment: Chapter 195 at beginning of (1) and (2) inserted exception clause; inserted (3) exempting certain water distribution systems from requirement to use certified operator; and made minor changes in style. Amendment effective March 26, 1999.

Severability: Section 9, Ch. 195, L. 1999, was a severability clause.

1983 Amendment: Inserted (3) allowing Department to issue temporary certificates.

37-42-303. Operator of treatment plant or distribution system to be certified — exemption.

Administrative Rules

ARM 17.40.203 Certification of operators.
ARM 17.40.208 Certified operator in charge of system — exceptions.

37-42-304. Application for operator's certificate — fee.

Compiler's Comments

2005 Amendment: Chapter 467 in second sentence after "cost" deleted "as established pursuant to 37-1-134". Amendment effective July 1, 2005.

1999 Amendment: Chapter 195 at end of second sentence inserted exception clause requiring department to reduce fee by amount that the cost of processing the application is offset by federal funds; and made minor changes in style. Amendment effective March 26, 1999.

Severability: Section 9, Ch. 195, L. 1999, was a severability clause.

1983 Amendment: Near end of section, substituted "as established pursuant to 37-1-134" for "set forth in 37-42-308 for the filing of each application".

Administrative Rules

ARM 17.40.212 Fees.

37-42-305. Certification without examination.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1987 Amendment: At end of section deleted reference to 37-42-301.

1983 Amendment: Substituted "department" for "board" twice; near beginning of section, after "may consider" deleted "for recommendation"; near end of section, substituted "37-42-202(2)" for "37-42-201(2)".

37-42-307. Retention of certificate by operators who terminate employment — notification to department.

Compiler's Comments

1983 Amendment: In (1), substituted "department" for "board" twice; inserted (2) requiring notification to Department if certified operator terminates employment.

37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) near middle of second sentence after first "department" deleted "pursuant to 37-1-134"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 in (2) at beginning of first and second sentences inserted "Subject to subsection (6)"; inserted (6) to provide that this section may not be interpreted to conflict with 37-1-138; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1999 Amendment: Chapter 195 at end of third sentence in (1) inserted exception clause requiring department to reduce fee by amount that the cost of administering the certificate is offset by federal funds; and made minor changes in style. Amendment effective March 26, 1999.

Severability: Section 9, Ch. 195, L. 1999, was a severability clause.

1983 Amendment: Near end of (1), before "schedule" deleted "following" and substituted "adopted by the department pursuant to 37-1-134" for former subsections (a) through (e), which read: "(a) class I, $20;
(b) class II, $15;
(c) class III, $10;
(d) class IV, $5;
(e) class V, $3."; substituted "department" for "board" in four places in (2), once in (3), and at end of (5).

37-42-309. Deposit of fees.

Compiler's Comments

1983 Amendments: Chapter 243 deleted "the board of water and wastewater operators account in" in first sentence, after "state treasurer"; and near end of sentence, substituted "council" for "board".

Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-42-321. Revocation of operator's certificate — disciplinary action by department.

Compiler's Comments

2001 Amendment: Chapter 79 in (1) in introductory clause after "department may" substituted "issue an order revoking" for "revoke" and after "operator" deleted "following a hearing by the department"; inserted (3) allowing an aggrieved person to request a board hearing on a contested department order; inserted (4) applying the contested case provisions of the Montana Administrative Procedure Act to the hearing; and made minor changes in style. Amendment effective March 20, 2001.

Preamble: The preamble attached to Ch. 79, L. 2001, provided: "WHEREAS, certain environmental statutes administered by the Montana Department of Environmental Quality provide that a person aggrieved by a decision of the Department may appeal that decision to the Director of the Department; and

WHEREAS, the possibility of an appeal prevents the Director from becoming involved in certain Department decisions that are subject to appeal to the Director; and

WHEREAS, section 82-4-427, MCA, states that a contested case hearing requested under The Opencut Mining Act must be held within 30 days after the hearing is requested; and

WHEREAS, it is difficult for the Department to conduct a contested case hearing under that Act within 30 days after the hearing is requested; and

WHEREAS, certain revisions to statutes administered by the Department are necessary for clarity and consistency and to conform the statutes to current drafting style."

Saving Clause: Section 18, Ch. 79, L. 2001, was a saving clause.

1983 Amendment: Substituted (2), allowing Board to take disciplinary action pursuant to 37-1-136, for former (2), which read: "A person who has his certificate revoked by the department may appeal to the board for a rehearing within 10 days of notification by the department, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final."

Administrative Rules

ARM 17.40.214 Disciplinary actions — description of grounds — procedures for revocation or suspension of certificate and reprimand of certified operator.

CHAPTER 43
WATER WELL CONTRACTORS

Chapter Compiler's Comments

Reestablishment: Section 1, Ch. 642, L. 1983, provided: "The board of water well contractors is reestablished for 6 years pursuant to 2-8-122, with its existing statutory authority and rules." Report No. 81-SS-10, the audit report recommending reestablishment of the Board, is available from the Legislative Auditor's office.

Chapter Administrative Rules

Title 36, chapter 21, ARM Board of Water Well Contractors.

Part 1
General

37-43-101. Purpose.

Compiler's Comments

1987 Amendment: In two places, after "waste", inserted "and contamination" and in four places inserted "and monitoring wells".

Administrative Rules

ARM 36.21.669A through 36.21.673 Abandoned wells.
ARM 36.21.678 Water well log report.

37-43-102. Definitions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Inserted definition of geotechnical boring; substituted definition of monitoring well for former definition that read: ""Monitoring well" means a well that is used for monitoring groundwater quality or flow direction but is not used for withdrawing groundwater for purposes other than water quality sampling or pump testing"; and in definition of monitoring well constructor substituted "installs" for "drills or supervises the drilling of". Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

1987 Amendment: Inserted definition of apprentice water well driller, monitoring well, and monitoring well constructor; in definition of water well contractor inserted "alter, or rehabilitate"; and in definition of water well driller inserted "other than an apprentice" and "altered, or rehabilitated".

1985 Amendment: In (2) substituted "department of natural resources and conservation" for "department of commerce" and substituted "Title 2, chapter 15, part 33" for "Title 2, chapter 15, part 18"; in (4) after "natural person" substituted "who contracts on behalf of a firm, corporation, partnership, or other business entity to construct" for "who constructs"; and inserted (5) defining water well driller.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in definition of Department; changed internal references to the department and the board.

Administrative Rules

ARM 36.21.634 Definitions.

37-43-104. Licensed monitoring well constructor to supervise all construction of monitoring wells.

Compiler's Comments

Initial Licensing as Monitoring Well Constructor: Section 2, Ch. 516, L. 1989, provided: "(1) An applicant who submits an application for a monitoring well constructor's license before December 31, 1989, shall receive a license if the applicant:

(a) provides verification of 1 or more years' experience in installing monitoring wells within the 4 years preceding the application;

(b) pays a fee prescribed by the board of water well contractors in 37-43-303; and

(c) provides a bond in compliance with 37-43-306.

(2) A licensed water well contractor is not required to obtain a separate license to install monitoring wells, but shall meet the requirements of subsections (1)(b) and (1)(c) before being authorized to proceed with monitoring well installation." Section 16, Ch. 538, L. 1987, which provided for initial licensure through June 1, 1988, was repealed by sec. 8, Ch. 516, L. 1989, effective April 12, 1989.

Initial Licensure as a Monitoring Well Constructor: Section 16, Ch. 538, L. 1987, provided: "(1) An applicant who submits an application for a monitoring well constructor's license before June 1, 1988, shall receive a license if the applicant:

(a) is a licensed water well contractor or is engaged in installing monitoring wells;

(b) provides verification of 1 or more years' experience in drilling monitoring wells within the 4 years preceding the application;

(c) pays a fee established by the board under 37-43-303;

(d) successfully completes the examination for monitoring well installation; and

(e) provides a bond in compliance with 37-43-306.

(2) An applicant who applies for a monitoring well constructor's license after May 31, 1988, shall meet the requirements of 37-43-303, 37-43-305, and 37-43-306."

Administrative Rules

Title 36, chapter 21, subchapter 7, ARM Monitoring well constructor's licenses.

Title 36, chapter 21, subchapter 8, ARM Monitoring well construction standards.

Part 2
Board of Water Well Contractors

Part Administrative Rules

Title 36, chapter 21, subchapter 1, ARM Organizational rule.

Title 36, chapter 21, subchapter 2, ARM Procedural rules.

37-43-201. Organization — seal — compensation of members.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 603, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: Inserted (1) requiring Board to annually elect chairman and vice-chairman; and in (3) increased compensation to $50 from $20 per day and in last sentence substituted "members who are employees" for "state engineer, the director of environmental sanitation of the state board of health, and other employees".

1981 Amendment: Deleted former subsection (2) relating to board authority to hire staff.

37-43-202. Powers and duties.

Compiler's Comments

1993 Amendment: Chapter 284 substituted (10)(c) authorizing disciplinary action and orders for "deny, revoke, or suspend licenses for good cause, after notice and opportunity to be heard"; deleted former (10)(d) that read: "(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board"; and made minor changes in style. Amendment effective April 7, 1993.

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

1991 Amendment of Administrative Rule — Delayed Termination of Fee Schedule: Section 11, Ch. 769, L. 1991, directed the Board of Water Well Contractors to amend Rule 36.21.415, Administrative Rules of Montana. See 1991 Session Law for text.

Section 22, Ch. 769, L. 1991, provided that the amendment, if implemented, to this rule terminates July 1, 1993.

1989 Amendment: Near beginning of first sentence of (4) substituted "minimum standards" for "rules" and at end, after "wells", deleted "by January 1, 1989" and inserted second and third sentences of (4) regarding standards; in (5), after "water wells", inserted "or monitoring wells"; and made minor changes in phraseology. Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

1987 Amendment: In (3), after "enforcement procedures", deleted "by January 1, 1987"; inserted (4) requiring Board to adopt rules regarding monitoring wells; in (6) substituted language including water well contractors and monitoring well constructors for "The board may establish a program for training water well drillers or prospective water well drillers and apprentices to more effectively carry out this chapter"; at end of (7) and (10) inserted "and monitoring well constructors"; and made minor changes in phraseology.

1987 Statement of Intent: The statement of intent attached to Ch. 538, L. 1987, provided: "A statement of intent is required for this bill because it requires the board of water well contractors to adopt rules to implement the provisions of this act.

This bill authorizes the board to license and provide training for persons constructing monitoring wells and to adopt rules regarding the construction, use, and abandonment of monitoring wells. The board's present jurisdiction is over wells intended for the location, diversion, artificial recharge, or acquisition of ground water. This bill is intended to clarify that the board's jurisdiction extends to wells that monitor ground water movement and quality. Monitoring wells can affect the ground water resource no less than production wells, and the increased use of monitoring wells requires that the board certify monitoring well constructors and adopt rules for monitoring well construction."

1985 Amendment: Inserted (3) requiring Board to adopt rules to establish construction standards and enforcement procedures; in (5) after "The board may", deleted "subject to 37-1-101 and 37-1-121"; inserted (6) requiring Board to regulate licensing, registration, and conduct of licensees; inserted (7) requiring Board to set fees; in (8) at end deleted "subject to 37-1-101(6)"; in (9)(a) after "contractors", inserted "and drillers"; in (9)(c) before "revoke", inserted "deny"; and inserted (10) requiring Board to pay its share of costs.

1985 Statement of Intent: The statement of intent attached to Ch. 728, L. 1985, provided: "A statement of intent is required for this bill because the bill amends 37-43-202 to require the board of water well contractors to adopt rules for specific water well construction standards. It is intended that any existing standards be substantially reviewed, modified, and incorporated into the new standards. It is further intended that the new standards should be modeled after the existing water well construction standards adopted by the Montana well drillers association and the United States environmental protection agency. It is the intent of the legislature that the act of transferring the board of water well contractors from the department of commerce to the department of natural resources and conservation may not be construed to abridge or otherwise restrict the existing authority and autonomy of the board of water well contractors."

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

Title 36, chapter 21, ARM Board of Water Well Contractors.

37-43-204. Earmarked money for board expenses — expenditure of funds from bonds.

Compiler's Comments

1997 Amendment: Chapter 422 in (2), in last sentence, inserted "other than those to pay any administrative costs". Amendment effective July 1, 1997.

1993 Amendment: Chapter 284 at end of second sentence of (2) substituted "37-43-309, 37-43-310, and 37-43-313" for "37-43-311". Amendment effective April 7, 1993.

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

Effective Date: Section 4, Ch. 493, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 20, 1991.

Part 3
Licensing

Part Administrative Rules

Title 36, chapter 21, subchapter 4, ARM Substantive rules — licensure.

Title 36, chapter 21, subchapter 7, ARM Monitoring well constructor's license.

37-43-301. Licensed person to supervise all construction.

Compiler's Comments

1987 Amendment: In (1), before "contractor", inserted "water well"; inserted (2) requiring construction supervisor to be person who contracted for the construction; and inserted (3) requiring driller to be employed by contractor.

37-43-302. License required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: At end of (1) inserted "or a separate license to install monitoring wells"; and near end of (3)(b)(ii) inserted "on monitoring wells". Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

1987 Amendment: In (1) substituted language including references to monitoring wells, water well contractor, water well driller, monitoring well constructor, and alteration and rehabilitation of wells for "The drilling, making, or construction of water wells into the groundwater resources of this state is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any contractor or driller, as defined in this chapter, to construct a water well without first having obtained a valid license therefor as provided for in this chapter"; in (2)(a) inserted "alters, or rehabilitates" and "or monitoring" and at end substituted "provided" for "and"; in (2)(a)(i), at beginning, inserted "the land"; in (2)(a)(ii), at beginning, substituted "the person" for "who"; inserted (2)(a)(iii) requiring construction to conform to minimum construction standards set by the Board; in (2)(b), at beginning, substituted "an apprentice water well driller" for "a person"; in (3)(a), near end, substituted "located, the construction or installation method to be used" for "drilled"; in (3)(b)(i) substituted "well is located" for "the applicant intends to drill the well"; inserted (3)(b)(ii) requiring issuance of permit if method meets minimum Board standards; and made minor changes in phraseology.

1985 Amendment: In (1), at beginning of second sentence inserted exception clause and in second sentence, after "contractor", inserted "or driller"; inserted (2) stating for whom license is not required; and inserted (3) establishing procedure to obtain permit.

Administrative Rules

ARM 36.21.403 Requirements for water well contractors.
ARM 36.21.405 Contents of contractor's license.
ARM 36.21.406 Contents of driller's license.
ARM 36.21.407 Change of responsible contractor.
ARM 36.21.409 Supervision.
ARM 36.21.703 Contents of monitoring well constructor's license.

37-43-303. Application — fee.

Compiler's Comments

1991 Amendment: In (2), in third sentence after "board", inserted provision allocating $25 of water well contractor license fee and $15 of water well driller license fee or monitoring well construction license fee to the ground water assessment account; and made minor change in style. Amendment effective July 1, 1991, and terminates July 1, 1993.

1991 Amendment of Administrative Rule — Delayed Termination of Fee Schedule: Section 11, Ch. 769, L. 1991, directed the Board of Water Well Contractors to amend Rule 36.21.415, Administrative Rules of Montana. See 1991 Session Law for text.

Section 22, Ch. 769, L. 1991, provided that the amendment, if implemented, to this rule terminates July 1, 1993.

1987 Amendment: In (1), near beginning, inserted "alteration, or rehabilitation" and "water or monitoring", near end of first sentence, before "license", deleted "contractor's or driller's", and in second sentence substituted "The application must set forth the applicant's" for "setting out his"; in (2) made minor changes in phraseology; and in (3), at beginning, substituted "An appropriate license" for "A license to construct water wells" and near middle inserted "or monitoring well".

1985 Amendment: In (1), at beginning inserted exception clause and after "contractor's" inserted "or driller's"; in (2) at end deleted "subject to 37-1-101(6)".

1983 Amendments: Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 642, near beginning of (2), after "fee", changed "of $100" to "prescribed by the board".

Administrative Rules

ARM 36.21.402 Licensure restricted to natural persons — nontransferable.
ARM 36.21.415 Fee schedule.
ARM 36.21.702 Monitoring well constructor's license — application approval and examination.

37-43-305. Examination and qualifications.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment of Administrative Rule — Delayed Termination of Fee Schedule: Section 11, Ch. 769, L. 1991, directed the Board of Water Well Contractors to amend Rule 36.21.415, Administrative Rules of Montana. See 1991 Session Law for text.

Section 22, Ch. 769, L. 1991, provided that the amendment, if implemented, to this rule terminates July 1, 1993.

1989 Amendment: At end of (2)(h), (3)(f), and (4)(f) inserted "or equivalent education, experience, or both, as determined by the board". Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

1987 Amendment: In (1), near beginning before "rules", inserted "board", near middle, after "water wells", deleted "which the board adopts", inserted "and monitoring wells", and at end of first sentence deleted "to drill or make wells for the production of underground waters in this state"; in (2), in introductory clause, substituted "for a water well contractor's license" for "required by the board"; in (2)(d), before "geology", deleted "underground"; inserted (3) stating licensure qualifications for water well driller; inserted (4) stating licensure qualifications for monitoring well constructor; and made minor changes in phraseology.

1985 Amendment: In (1) after "the department shall", deleted "subject to 37-1-101(4)".

1983 Amendment: In (2), reduced time for reapplication from 6 to 3 months.

Erroneous Statement of Intent: The statement of intent attached to Ch. 642, L. 1983, provided: "A statement of intent is required for House Bill No. 373 because section 4 [37-43-305] grants rulemaking or licensing authority to the Board of Water Well Contractors.

The purpose of the Board is to assure that only quality contractors are licensed. The bill provides for bonding at $4,000 to enforce the compliance with the rules adopted by the Board."

The statement of intent was apparently erroneously added to the bill, as no rulemaking authority was granted in section 4 or elsewhere.

Administrative Rules

ARM 36.21.403 Requirements for water well contractors.
ARM 36.21.410 Examination.
ARM 36.21.412 Apprentices.
ARM 36.21.415 Fee schedule.
ARM 36.21.702 Monitoring well constructor's license — application approval and examination.

37-43-306. Bond to be required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: Inserted (3) regarding bonded federal or state employees; and inserted (4) regarding submission of one bond for an entire firm, corporation, or partnership. Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

1987 Amendment: In (1), near beginning, substituted "water well contractor's or monitoring well constructor's license" for "contractor's license" and after "bond or" deleted "in lieu thereof"; and inserted (2) requiring only one bond from person licensed in more than one category.

1985 Amendment: Near beginning before "license", inserted "contractor's", and at end deleted "and reasonable requirements made by the board in connection with the drilling of an individual well".

1983 Amendment: Increased bonding requirement from $1,000 to $4,000.

Administrative Rules

ARM 36.21.411 Bond requirements.

37-43-307. Annual renewal — fee — revocation for nonrenewal.

Compiler's Comments

2003 Amendment: Chapter 271 in (2) at beginning of first and second sentences inserted "Subject to subsection (3)"; inserted (3) to provide that this section may not be interpreted to conflict with 37-1-138; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1991 Amendment: In (1) inserted third sentence providing for deposit of renewal fees in the ground water assessment account, except for part of certain license fees. Amendment effective July 1, 1991, and terminates July 1, 1993.

1991 Amendment of Administrative Rule — Delayed Termination of Fee Schedule: Section 11, Ch. 769, L. 1991, directed the Board of Water Well Contractors to amend Rule 36.21.415, Administrative Rules of Montana. See 1991 Session Law for text.

Section 22, Ch. 769, L. 1991, provided that the amendment, if implemented, to this rule terminates July 1, 1993.

1987 Amendment: In (2), in next-to-last sentence, inserted "or monitoring well construction" and deleted reference to 37-43-304.

1983 Amendment: At end of (1) after "fee" changed "of $25" to "as prescribed by the board".

37-43-308. Reciprocity.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: In first sentence, after "water wells", inserted "or monitoring wells" and after "well driller's" inserted "or monitoring well constructor's"; in second sentence, after "water wells", inserted "or monitoring wells"; and made minor change in phraseology. Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

1987 Amendment: Near beginning, after "water well contractor's", inserted "or water well driller's".

Administrative Rules

ARM 36.21.408 Driller completion of examination.
ARM 36.21.410 Examination.

37-43-309. Complaints and investigations.

Compiler's Comments

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

37-43-310. Disciplinary procedure.

Compiler's Comments

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

37-43-312. Penalty.

Compiler's Comments

1987 Amendment: Near beginning inserted "altering, or rehabilitating" and "or monitoring wells".

37-43-313. Disciplinary authority.

Compiler's Comments

2003 Amendment: Chapter 271 inserted (3) to provide that this section may not be interpreted to conflict with 37-1-138. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

37-43-314. Injunctions.

Compiler's Comments

1993 Amendment: Chapter 284 deleted former (1) authorizing the Board to adopt disciplinary rules (see 1993 Session Law for text); deleted former (2) requiring disciplinary action to be conducted as a contested case hearing (see 1993 Session Law for text); and made minor changes in style. Amendment effective April 7, 1993.

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

1987 Amendment: In (3) inserted "or monitoring wells" and made minor changes in phraseology.

Part 4
Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee.

Compiler's Comments

1987 Amendment: In two places substituted "water well contractor, water well driller, or monitoring well constructor" for "contractor".

37-43-402. Completion of contracts by successor in interest of licensee.

Compiler's Comments

1987 Amendment: Near beginning and end inserted "or monitoring well constructor('s)"; in two places inserted "monitoring well(s)"; near middle, after "drilling, making", inserted "or construction"; and substituted "licensee" for "licensed water well contractor".

Administrative Rules

ARM 36.21.404 Completion of contracts by successor in interest of licensed contractor.

CHAPTER 47
OUTFITTERS AND GUIDES

Chapter Compiler's Comments

Severability Clause: Section 8, Ch. 541, L. 1975, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Section 17, Ch. 221, L. 1971, read: "The provisions of this act shall be severable, and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Chapter Administrative Rules

Title 24, chapter 171, ARM Board of Outfitters.

Part 1
General

Part Compiler's Comments

Preamble: The preamble attached to Ch. 543, L. 1999, provided: "WHEREAS, private property rights and free market principles will result in a certain amount of ebb and flow of outfitter presence statewide or in any particular geographical region; and

WHEREAS, approval or denial of an outfitter's request for expansion of client service base is predicated upon the state's broad power to regulate for the public health, welfare, and safety, which includes wildlife held in public trust, public hunting, private property rights, and private enterprise; and

WHEREAS, approval or denial of a net client hunter use expansion request must provide due process for outfitters and the opportunity for public comment under the Montana Administrative Procedure Act, including agency response to those public comments; and

WHEREAS, implementing the regulations necessary to meet the Legislature's goal of a reduction in new hunting use of areas by outfitters when the new use will cause undue conflict with existing hunting uses in the areas, providing necessary due process to outfitters, and providing for and responding to public comment will require time, staff, and resources not currently available in agency budgets."

37-47-101. Definitions.

Compiler's Comments

2017 Amendment: Chapter 217 inserted definition of emergency; in definition of outfitter's assistant after "guide" inserted "when a guide's license cannot be readily attained prior to or during the service of a participant due to an emergency"; and made minor changes in style. Amendment effective October 1, 2017.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

2015 Amendment: (Temporary version) Chapter 55 in (10) at end substituted "outfitter or guide" for "outfitter, guide, [or professional guide]". Amendment effective October 1, 2015.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 inserted definition of outfitter's assistant; in definition of outfitter near end inserted "or outfitter's assistant"; and made minor changes in style. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 deleted definition that read: ""Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season"; deleted definition that read: ""Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house"; inserted definition of business entity; in definition of net client hunter use after "means" substituted current text for "the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201"; deleted definition that read: ""Nonresident" means a person other than a resident"; in definition of outfitter after "a licensed guide" deleted "or professional guide"; deleted definition that read: ""Professional guide" means a guide who meets experience, training, and testing qualifications for designation as a professional guide, as set by board rule"; deleted definition that read: ""Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102"; and made minor changes in style. Amendment effective October 1, 2013.

Code Commissioner Correction: In definition of outfitter's assistant in temporary version, the code commissioner has inserted brackets around "or professional guide" to reflect the deletion of the definition of professional guide and the elimination of professional guide licensure by Ch. 341, L. 2013.

2005 Amendment: Chapter 467 in definition of license year after "period" substituted "indicated on the face of the license for which the license is valid" for "beginning January 1 and ending December 31 of the same year"; in definition of net client hunter use at end after "37-47-201" deleted "(7)"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1999 Amendment: Chapter 543 inserted definitions of base of operations, camp, and net client hunter use; and made minor changes in style. Amendment effective April 30, 1999.

1995 Amendment: Chapter 328 inserted definitions of accompany, consideration, and guide; in definition of outfitter deleted (a) that read: "(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood", after "pack animal" inserted "facilities; camping equipment; vehicle, watercraft, or other conveyance", after "personal service" deleted "for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats", after "kill" inserted "or pursue", after "game" inserted "including fish", after "person" inserted "either part or all of the way", and after "purposes" inserted "or supervises a licensed guide or professional guide in accompanying that person" and deleted (c) and (d) that read: "(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal"; in definition of participant, after "licensed outfitter", deleted "or professional guide"; substituted current definition of professional guide for former definition that read: ""Professional guide" and "guide" mean a person:

(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds or fish. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1991 Amendment: Although sec. 38, Ch. 16, L. 1991, purported to amend the version of this section that was to become effective July 1, 1991, the amendment was rendered ineffective by the approval of sec. 1, Ch. 143, L. 1991, on March 25, 1991, which made permanent the Board of Outfitters.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated the 1987 amendments to this section July 1, 1991. Repealer effective March 25, 1991.

1989 Amendment: In definition of professional guide, after ""Professional guide"", inserted "and "guide"" and inserted (b) relating to a person who contracts independently as a guide; and made minor changes in phraseology.

1987 Amendment: In introductory clause substituted "chapter" for "part"; inserted definitions of license year and nonresident; deleted former (4) that read: "(4) "Outfitters' council" means the Montana outfitters' council provided for in 2-15-3403"; and made minor grammatical change.

Transfer of Agency: Section 10, Ch. 528, L. 1987, provided: "Transfer of agency — name change — duties transferred. (1) The Montana outfitters' council is transferred to the department of commerce and is renamed the board of outfitters.

(2) The authority and functions of the department of fish, wildlife, and parks regarding licensing of outfitters and guides are transferred to the board of outfitters, and any reference in 87-4-122, 87-4-124, 87-4-125, 87-4-129, 87-4-131, and 87-4-143 to the department of fish, wildlife, and parks or to the department or director, meaning the department of fish, wildlife, and parks or the director of that department, is changed to the board, meaning the board of outfitters."

1983 Amendment: In (3), following "person" deleted "persons, company, or corporation" and inserted clause creating exception from definition.

1981 Amendments: Chapter 170 added "for consideration" at the beginning of (3)(d); and added (7) defining participant.

Chapter 545 deleted definition of advisory council; changed license year in (1) from May 1 through April 30 of the next year to January 1 through December 31 of the same year; added "and accompanies such a party or person on an expedition for any of these purposes" to (3)(b); inserted "for consideration" at the beginning of (3)(d); inserted (4) defining outfitters' council; and deleted ""Resident guide" means a resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation."

Case Notes

Illegal Outfitting Chargeable in County Where Some Outfitting Acts Occur: Ruiz was charged in a fish and game sting operation with outfitting without a license after meeting officers in Missoula County and taking them to Flathead Lake to hunt. The charge was filed in Missoula County, and Ruiz contended that because the actual hunting activity took place in a different county, the charge was filed in an improper venue. The Supreme Court noted that the definition of an outfitter includes a person who provides a personal service for a person to hunt and who accompanies that person, either part or all of the way, on a hunting expedition. Ruiz met the officers in Missoula County and accompanied them on their hunting expedition, so the outfitting violation occurred at least in part in Missoula County. Therefore, charging the crime in Missoula County was a proper venue. St. v. Ruiz, 2004 MT 135, 321 M 357, 91 P3d 565 (2004).

Traversing State Lands to Conduct Outfitting on Private Land as Not Constituting Outfitting on State Lands: The Weitzs owned a ranch, and within the boundaries of their land was state land that they leased. The Weitzs were using roads on their leased land to spot game and were traveling across the leased land on existing roads to get to their own property to hunt. The Department of Natural Resources and Conservation concluded that the defendants were engaged in recreational use of state lands and were in violation of a Department rule prohibiting vehicle travel across state lands. The Supreme Court upheld the District Court's decision that noted that the hearings examiner had acknowledged that no elk or deer had been killed, shot at, or pursued on leased state land by the defendants and therefore reversed the hearings examiner's decision as being based upon faulty reasoning, conjecture, and speculation. The Supreme Court also upheld the lower court's ruling that the Department's application of the rule prohibiting travel across state lands by a lessee to conduct activity elsewhere was an overbroad and unlawful application of the rule. In addition, the Supreme Court held that crossing state lands to conduct outfitting on private lands does not constitute outfitting on state lands. Weitz v. Dept. of Natural Resources and Conservation, 284 M 130, 943 P2d 990, 54 St. Rep. 807 (1997).

Part 2
Board of Outfitters

Part Compiler's Comments

Preamble: The preamble attached to Ch. 543, L. 1999, provided: "WHEREAS, private property rights and free market principles will result in a certain amount of ebb and flow of outfitter presence statewide or in any particular geographical region; and

WHEREAS, approval or denial of an outfitter's request for expansion of client service base is predicated upon the state's broad power to regulate for the public health, welfare, and safety, which includes wildlife held in public trust, public hunting, private property rights, and private enterprise; and

WHEREAS, approval or denial of a net client hunter use expansion request must provide due process for outfitters and the opportunity for public comment under the Montana Administrative Procedure Act, including agency response to those public comments; and

WHEREAS, implementing the regulations necessary to meet the Legislature's goal of a reduction in new hunting use of areas by outfitters when the new use will cause undue conflict with existing hunting uses in the areas, providing necessary due process to outfitters, and providing for and responding to public comment will require time, staff, and resources not currently available in agency budgets."

37-47-201. Powers and duties of board relating to outfitters and guides.

Compiler's Comments

2021 Amendment: Chapter 281 in (4)(c)(ii) at beginning substituted "indicate" for "report"; in (4)(d) at end deleted "The reports must be filed annually and report"; deleted former (4)(d)(i), (4)(d)(ii), and (4)(d)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective April 22, 2021.

Transition — Applicability: Section 14, Ch. 281, L. 2021, provided: "Within 60 days of [the effective date of this act] [April 22, 2021], the board membership must reflect [section 1] [2-15-1773]. All terms of all board members appointed under the previous composition of the board terminate 60 days following [the effective date of this act] [April 22, 2021], and all appointments made, and vacancies filled after [the effective date of this act] [April 22, 2021] must be in accordance with [section 1] [2-15-1773]. The appointments must consist of 1, 2, or 3-year terms at the governor's discretion, so the initial terms of the newly composed board members are staggered in accordance with [section 1] [2-15-1773]."

Severability: Section 16, Ch. 281, L. 2021, was a severability clause.

2019 Amendment: Chapter 236 inserted (4)(c)(i) and (4)(c)(ii) concerning requirements for operations plans; in (4)(d)(i) inserted "or automated licensing system numbers"; in (4)(d)(ii) substituted "names or license numbers of outfitters, guides, and outfitter's assistants" for "outfitters and guides"; in (4)(d)(iii) substituted "dates of client services" for "the license numbers of those outfitters and guides, dates of client services, and private land acreage where licensed outfitters are authorized by the landowner to operate, including exclusive arrangements and lease agreements"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 217 in (4)(e) after "rules specifying" inserted "what constitutes an emergency for which an outfitter's assistant may be hired" and after "The rules" substituted "must" for "may"; and made minor changes in style. Amendment effective October 1, 2017.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 inserted (4)(e) regarding rules pertaining to outfitter's assistants. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 in (3) substituted "outfitter standards and guide standards" for "outfitter standards, guide standards, and professional guide standards"; in (4)(a), (4)(b), and (5) substituted references to outfitters and guides for references to outfitters, guides, and professional guides; in (4)(a) in second sentence substituted "may include" for "must include", after "experience" deleted "in activities similar to the service to be provided" and at end deleted "and condition and type of gear and equipment, and the filing of an operations plan"; in (4)(c) inserted "components and", substituted "operations plans" for "proposed new operations plans involving hunting use", and deleted former last sentence that read: "Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter"; in (1)(d) substituted last sentence for former last sentence that read: "The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access enhancement programs"; deleted former (6) that read: "(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d)"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 328 in (4)(c) in first sentence after "use" deleted "or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan" and deleted former third sentence that read: "Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services"; inserted (7) regarding records of net client hunter use; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 44 in (4)(d) near end after "access" substituted "enhancement" for "management". Amendment effective October 1, 2007.

2005 Amendment: Chapter 467 deleted former (1) that read: "(1) prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet must contain the names and addresses of only those outfitters who have a valid license for the current license year"; deleted former (5)(a) that read: "(a) rules of procedure"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Chapter 543 in (5)(d) after "client" substituted "hunter use, as set forth in 37-47-316 and 37-47-317" for "hunting use" and after "plan" deleted "in order to determine if the proposal will cause an undue conflict with existing hunting use of the area, constituting a threat to the public health, safety, or welfare. The board may not approve a new operations plan or the proposed expansion of net client hunting use under the existing operations plan if it finds that the proposal will cause an undue conflict with existing hunting use of the area"; inserted (5)(e) requiring board to adopt rules establishing outfitter reporting requirements and requiring annual reports on actual leased acreage used and unused by clients; and inserted (7) requiring board to maintain records of actual clients served by certain Montana outfitters. Amendment effective April 30, 1999.

1995 Amendment: Chapter 328 in (4) inserted "guide standards"; in (5)(b), after "including", deleted "but not limited to" and after "licensure" inserted "as an outfitter, guide, or professional guide" and at beginning of second sentence substituted "Qualifications for outfitters" for "These qualifications", after "training" inserted "testing", and at end inserted "and the filing of an operations plan"; in (5)(c), before "health", inserted "public" and after "welfare" substituted "including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide" for "of those persons using the services of outfitters and for the protection of landowners, the general public, and outfitters' employees, agents, and representatives"; inserted (5)(d) relating to rules setting standards for new operations plans and expansion of net client hunting use; at end of (6), after "outfitters", inserted "guides"; and made minor changes in style.

1995 Statement of Intent: The statement of intent attached to Ch. 328, L. 1995, provided: "A statement of intent is required for this bill because rulemaking authority is granted to the board of outfitters in 37-47-201 requiring the board to establish qualifications for two levels of guides and to review proposed operations plans and changes to operations plans.

The legislature intends that at a minimum the rules on professional guide qualifications address experience, and if the board considers it appropriate, additional training and a qualifying examination to ensure that licensed professional guides are qualified to safely provide services for compensation to clients of the endorsing outfitter.

The legislature intends that rules on operations plans be directed toward a reduction in new hunting uses of areas by outfitters when the new uses will cause undue conflict with existing hunting uses of the areas."

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (5)(b), in second sentence after "experience", inserted "in activities similar to the service to be provided"; at end of (5)(c) inserted "and outfitters' employees, agents, and representatives"; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 18, Ch. 220, L. 1993, was a severability clause.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated the 1987 amendments to this section July 1, 1991. Effective March 25, 1991.

1987 Amendment: In introductory clause substituted "board" for "department"; deleted last sentence of (1) that read: "The costs of publication of the pamphlet shall be paid from the state special revenue fund, fish and game account"; in (2), after "government", deleted "through its appropriate agencies or instrumentalities"; and substituted (3) through (6) (see 1987 Session Law for text) for former (3) through (6) that read: "(3) establish a minimum of two meetings annually with the outfitters' council;

(4) consult with the outfitters' council to develop policy concerning the administration of outfitting;

(5) designate a warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations;

(6) when the commission determines it necessary to protect the fishing resource, public health, public safety, or public welfare, establish and regulate a moratorium on either or both the Madison River or Big Hole River, the issuance of outfitter licenses for the purpose of float fishing as defined in 87-4-101(3)(c) except that those fishing outfitters licensed in 1980 may receive renewal licenses, if qualified. The total number of professional guide licenses endorsed by fishing outfitters under a moratorium may not be less than the total number issued in 1980."

1987 Statement of Intent: The statement of intent attached to Ch. 528, L. 1987, provided: "A statement of intent is submitted for this bill because the board of outfitters established in section 1 [2-15-3403] is required to adopt rules under section 4 [87-4-104] concerning the licensing of outfitters and guides. Because the licensing and enforcement authority is simply being transferred from the department of fish, wildlife, and parks to the board with no substantive change in requirements, it is intended that the board of outfitters should adopt rules substantially similar to those currently in place as adopted by the department."

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendments: Chapter 490 added (6) relating to an outfitting moratorium on the Madison or Big Hole River.

Chapter 545 inserted "license" before "year" in second sentence of (1); changed "advisory council" to "outfitters' council" in (3) and (4); and deleted "or ex officio warden" from (5).

Administrative Rules

Title 24, chapter 171, subchapter 1, ARM Organizational rule.

Title 24, chapter 171, subchapter 2, ARM Procedural rules.

Attorney General's Opinions

Failure of Board of Outfitters to Adopt Required Rules — Ruling on Case-by-Case Basis Ruled Improper Implementation of Statute: Subsection (5)(d) of this section required the Board of Outfitters to adopt rules containing standards for review and approval of outfitter operation plans in order for the Board to determine whether a proposed outfitter operation would cause an undue conflict with existing hunting use that would constitute a threat to public health, safety, or welfare. The statutory requirement for the Board to adopt rules was sufficiently clear, definite, and certain that the failure of the Board to initially adopt the rules required by the statute and instead determine on a case-by-case basis whether the proposed use would cause "undue conflict" was not a proper implementation of the statute. 47 A.G. Op. 22 (1998).

37-47-202. Executive director.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (2) that read: "(2) The duties of the executive director include:

(a) processing and investigating applications for licensure as an outfitter or guide;

(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;

(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and

(d) coordinating investigations with other local, state, and federal agencies"; and made minor changes in style. Amendment effective October 1, 2011.

2001 Amendment: Chapter 492 deleted former (2) that read: "(2) The executive director must:

(a) be a citizen of the United States and a resident of Montana;

(b) have knowledge of outfitting and guiding; and

(c) have at least 2 years' experience in management or equivalent training or education"; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 3, Ch. 183, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 3
Licensing

Part Compiler's Comments

Preamble: The preamble attached to Ch. 543, L. 1999, provided: "WHEREAS, private property rights and free market principles will result in a certain amount of ebb and flow of outfitter presence statewide or in any particular geographical region; and

WHEREAS, approval or denial of an outfitter's request for expansion of client service base is predicated upon the state's broad power to regulate for the public health, welfare, and safety, which includes wildlife held in public trust, public hunting, private property rights, and private enterprise; and

WHEREAS, approval or denial of a net client hunter use expansion request must provide due process for outfitters and the opportunity for public comment under the Montana Administrative Procedure Act, including agency response to those public comments; and

WHEREAS, implementing the regulations necessary to meet the Legislature's goal of a reduction in new hunting use of areas by outfitters when the new use will cause undue conflict with existing hunting uses in the areas, providing necessary due process to outfitters, and providing for and responding to public comment will require time, staff, and resources not currently available in agency budgets."

Severability: Section 18, Ch. 220, L. 1993, was a severability clause.

Part Case Notes

Sentencing Under Version of Statute in Effect at Time of Offense — No Error When Penalty Not Reduced in Current Version of Statute: The defendant was convicted of outfitting without a license. Although he was alleged to have committed the acts in 2005, he was sentenced under the 2007 version of the criminalizing statute. On appeal, the defendant argued that the District Court erred in sentencing him under the 2007 statute. The Supreme Court disagreed, finding that the penalty for a violation of the statute had not been reduced in the later version, and affirmed. St. v. Kebble, 2015 MT 195, 380 Mont. 69, 353 P.3d 1175.

No Error in Suspending Hunting and Fishing Privileges for Outfitting Without License When Suspension Also Assessed for Fish and Game Violations: Ruiz was convicted of outfitting without a license and for several fish and game violations. The sentencing court suspended Ruiz's hunting and fishing privileges for both violations, designating the suspension periods to run concurrently. Ruiz appealed on grounds that it was error to suspend privileges for outfitting without a license. The Supreme Court agreed that 37-47-344 does not allow for the suspension of privileges for outfitting violations. However, 87-1-102 (now repealed) allows suspension for fish and game violations. The practical effect of the concurrent sentences was suspension in any event, and the District Court did not abuse its lawful discretion in suspending hunting and fishing privileges for Ruiz's violations. St. v. Ruiz, 2005 MT 117, 327 M 109, 112 P3d 1001 (2005).

Administrative, Not Criminal, Sanctions Properly Imposed by Board of Outfitters Against Outfitter Who Hired Unlicensed Guide: Crismore hired an unlicensed guide. Pursuant to 37-1-312, the Board of Outfitters fined Crismore $1,000, placed him on probation for 18 months, and ordered him to complete remedial education. Crismore contended that the Board should have applied 37-47-344, which is the misdemeanor criminal statute that specifically applies to outfitters and guides and provides a maximum fine of $500. The Supreme Court found that Crismore's argument had no basis in law. The Board of Outfitters has no authority to conduct a criminal proceeding that may lead to a misdemeanor sentence under37-47-344. That authority is vested in courts of limited jurisdiction. Rather, the Board has authority to enforce license regulations and conduct administrative contested case hearings pursuant to 37-1-303 and therefore properly exercised its authority to sanction Crismore pursuant to 37-1-312. Crismore v. Bd. of Outfitters, 2005 MT 109, 327 M 71, 111 P3d 681 (2005).

Three-Year Statute of Limitations Reasonable for Prosecution of Misdemeanor Fish and Game Violations — Equal Protection and Due Process Not Violated: Defendant was charged with five misdemeanor fish and game and outfitter violations that occurred nearly 2 years earlier. Although misdemeanor violations must generally be charged within 1 year, 45-1-205(5) and (6) allow charges for misdemeanor fish and game crimes to be brought within 3 years of violation. Defendant contended that the extended statute of limitations for charging fish and game crimes violated equal protection and due process guarantees. The District Court reviewed the legislative history of 45-1-205(5) and (6) and concluded that the extended statute of limitations served a reasonable relation to the proper legislative purpose of protecting wildlife and that in order to effectively enforce fish and games laws, additional time to discover and investigate fish and game violations was warranted. The Supreme Court agreed. A separate class of misdemeanors for fish and game violations did not violate equal protection because all persons who commit such crimes are in a similarly situated class and subject to the same treatment. Further, because fish and game and outfitter violations sometimes require investigation over several hunting seasons and involve perpetrators who reside out of state, an extended statute of limitations is a reasonable exercise of the state's legitimate police power in preserving wildlife and does not violate substantive due process. St. v. Egdorf, 2003 MT 264, 317 M 436, 77 P3d 517 (2003).

37-47-301. License required — services performed — standards.

Compiler's Comments

2021 Amendment: Chapter 281 in (2) after "the outfitter shall keep" deleted "and submit". Amendment effective April 22, 2021.

Transition — Applicability: Section 14, Ch. 281, L. 2021, provided: "Within 60 days of [the effective date of this act] [April 22, 2021], the board membership must reflect [section 1] [2-15-1773]. All terms of all board members appointed under the previous composition of the board terminate 60 days following [the effective date of this act] [April 22, 2021], and all appointments made, and vacancies filled after [the effective date of this act] [April 22, 2021] must be in accordance with [section 1] [2-15-1773]. The appointments must consist of 1, 2, or 3-year terms at the governor's discretion, so the initial terms of the newly composed board members are staggered in accordance with [section 1] [2-15-1773]."

Severability: Section 16, Ch. 281, L. 2021, was a severability clause.

2013 Amendment: Chapter 341 in (1) in two places substituted "outfitter or guide" for "outfitter, guide, or professional guide"; in (3) at beginning substituted "outfitters, guides, and other employees" for "outfitters and guides, professional guides, and other employees" and at end after "guides" deleted "professional guides"; in (4) substituted "all applicable rules and regulations" for "environmental protection standards"; in (6) near beginning after "their" inserted "contractors" and substituted "the outfitter's advertised services" for "their advertised services to their clients"; in (7) after "guide" deleted "or professional guide"; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 throughout section inserted references to guide; in (1) substituted "advertise or otherwise represent to the public that the person is an outfitter, guide, or professional guide" for "advertise as an outfitter"; in (2) substituted "a participant" for "any person"; in (3), after "acting", deleted "under employment" and at end inserted "or employees of an outfitter"; in (7) substituted current sentence requiring persons hired or retained by outfitter to be licensed for "A person may not hold more than one Montana outfitter's license or hold an outfitter's license for more than one corporation, proprietorship, or partnership"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (2) substituted "board" for "department"; in (6), after "employees", inserted "agents, and representatives"; inserted (7) limiting a person to one outfitter's license; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Near beginning of (3) inserted "professional guides" and at end substituted "outfitters or professional guides" for "an outfitter".

1981 Amendment: Deleted "or resident guide" after "professional guide" in (1); deleted "or a resident guide takes out nonresident friends" after "person" and "or resident guide" before "shall keep" in (2); deleted "and resident guides" after "outfitters" twice in (4); and added "or fishing opportunities" to (5).

Administrative Rules

Title 24, chapter 171, subchapter 5, ARM Outfitter licensing.

Title 24, chapter 171, subchapter 6, ARM Guide licensing.

Case Notes

Outfitter's Obligation to Ensure Licensure of Guide — Board's Failure to Notify Outfitter of Unlicensed Guide Not Due Process Violation: Crismore hired an unlicensed guide and was sanctioned by the Board of Outfitters. Crismore appealed on grounds that he was denied due process because he was not informed until after the contested case hearing that the guide had applied for a license through a different outfitter but the application was returned for administrative reasons, denying Crismore of the opportunity to present a full and complete defense at the hearing. Although acknowledging that Crismore had a property interest in the outfitter's license that entitled him to due process protections, the Supreme Court nevertheless affirmed that Crismore was not denied due process. It is the responsibility of an outfitter to employ only licensed guides and to sign a guide's license when the guide is employed. It is not the responsibility of the Board to inform every licensed outfitter of the name of each person who unsuccessfully applies for a guide's license. Crismore was given a timely and meaningful opportunity to present his case to the Board as to why he hired an unlicensed guide. Crismore v. Bd. of Outfitters, 2005 MT 109, 327 M 71, 111 P3d 681 (2005).

Illegal Outfitting Chargeable in County Where Some Outfitting Acts Occur: Ruiz was charged in a fish and game sting operation with outfitting without a license after meeting officers in Missoula County and taking them to Flathead Lake to hunt. The charge was filed in Missoula County, and Ruiz contended that because the actual hunting activity took place in a different county, the charge was filed in an improper venue. The Supreme Court noted that the definition of an outfitter includes a person who provides a personal service for a person to hunt and who accompanies that person, either part or all of the way, on a hunting expedition. Ruiz met the officers in Missoula County and accompanied them on their hunting expedition, so the outfitting violation occurred at least in part in Missoula County. Therefore, charging the crime in Missoula County was a proper venue. St. v. Ruiz, 2004 MT 135, 321 M 357, 91 P3d 565 (2004).

37-47-302. Outfitter's qualifications.

Compiler's Comments

2021 Amendment: Chapter 281 in (2) at end deleted "or its designated agent". Amendment effective April 22, 2021.

Transition — Applicability: Section 14, Ch. 281, L. 2021, provided: "Within 60 days of [the effective date of this act] [April 22, 2021], the board membership must reflect [section 1] [2-15-1773]. All terms of all board members appointed under the previous composition of the board terminate 60 days following [the effective date of this act] [April 22, 2021], and all appointments made, and vacancies filled after [the effective date of this act] [April 22, 2021] must be in accordance with [section 1] [2-15-1773]. The appointments must consist of 1, 2, or 3-year terms at the governor's discretion, so the initial terms of the newly composed board members are staggered in accordance with [section 1] [2-15-1773]."

Severability: Section 16, Ch. 281, L. 2021, was a severability clause.

2013 Amendment: Chapter 341 in (2) substituted "business entity" for "company, corporation, or partnership"; deleted former (3) that read: "(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 179 in (2) in two places after "lease" inserted reference to contract for; and made minor changes in style. Amendment effective April 14, 2011.

2009 Amendment: Chapter 109 deleted former (4) and (5) that read: "(4) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, guide's, professional guide's, or conservation license from the state of Montana;

(5) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 328 in introductory clause, after "applicant for", deleted "and holder of"; in (1), at beginning, substituted "be 18 years of age or older" for "be a person of at least 18 years of age", after "outfitter" inserted "and meet experience, training, and testing requirements", and after "board" inserted "rule"; deleted former (4) that read: "(4) have not been convicted or forfeited bond of $100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of any state or the United States within the past 5 years"; in (4) inserted "guide's"; deleted (7) through (9) that read: "(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the 2 years preceding that for which the application is made;

(8) have not committed any negligent act or misconduct while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 at end of (1) inserted "as prescribed by the board"; in (4), after "violation of", inserted "this chapter or"; in (7) extended violation period to "2 years preceding" from "the license year immediately preceding"; deleted (10) that read: "(10) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In introductory clause, after "shall", deleted "in the opinion of the director"; and in (2) and (10) substituted "board" for "department".

1983 Amendment: Deleted former (2), which read: "be a resident of Montana;".

1981 Amendment: Changed "in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform" to "who is physically capable and mentally competent to perform" in (1); changed "be a citizen of the United States and a resident of Montana for a full 2 years, unless the residency requirement is waived by the department" to "be a resident of Montana" in (2); inserted "or applicable regulations" after "laws" in (5); inserted "professional" and "or conservation" before "license" in (6); inserted "professional" before "guide" in (8); inserted "professional" before "guide" twice and changed "which negligence or misconduct caused" to "that caused" before "a danger" in (9); changed "been convicted of a felony" to "pleaded guilty to or been adjudged by a court guilty of a felony" and changed "a deferred sentence has been imposed" to "a sentence has been deferred or suspended" in (10); and inserted "professional" before "guide" twice in (11).

Administrative Rules

ARM 24.171.413 Watercraft identification.

ARM 24.171.502 Outfitter qualifications.

Case Notes

Operating Business Across State Lines Not a Fundamental Right: The right to operate an outfitting business across state lines is not a fundamental right within the meaning of the Equal Protection Clause. In re Outfitter's License of Godfrey v. Fish & Game Comm'n, 193 M 304, 631 P2d 1265, 38 St. Rep. 661 (1981).

Outfitter's Residency Requirements Violative of Equal Protection: Prior to 1983 amendment of 87-4-122 (renumbered 37-47-302) and repeal of 87-4-126, in-state residency requirements for holders of an outfitter's license violated the Equal Protection Clause of the Montana Constitution. None of the reasons advanced by the state in defense of the statutes justified the inequities engendered by the statutes. Following St. v. Jack, 167 M 456, 539 P2d 726 (1975). Further, the two exceptions contained in the statutes bore little relationship to what the statute sought to accomplish. In re Outfitter's License of Godfrey v. Fish & Game Comm'n, 193 M 304, 631 P2d 1265, 38 St. Rep. 661 (1981).

Attorney General's Opinions

Statutory Qualifications Not Exclusive: A rule of the Board of Outfitters that requires certain experience as a condition to outfitter licensure and that may not be satisfied by an applicant based on experience in Montana prior to his 18th birthday is not inconsistent with this section, which conditions licensure on an applicant's being at least 18 years of age. 42 A.G. Op. 128 (1988).

37-47-303. Guide's qualifications.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 507, L. 2023. Amendment effective July 1, 2023.

2013 Amendment: Chapter 341 near beginning after "guide's" substituted "license must" for "or professional guide's license must meet the following qualifications"; in (1) and (2) after "guide" deleted "or professional guide"; deleted former (2) that read: "(2) In addition to the requirements listed in subsection (1), an applicant for licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule"; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendment: Chapter 172 in (1)(b) after "license" inserted "unless otherwise qualified under guide or professional guide standards established by the board pursuant to 37-47-201(4)"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 328 in (1), in introductory clause, inserted reference to guide's license; in (1)(a) substituted "be 18 years of age or older" for "be a person of at least 18 years of age" and at end inserted reference to guide's duties; inserted (1)(c) relating to valid wildlife conservation license; deleted former (1)(c) through (1)(e) that read: "(c) have not been convicted or forfeited bond of $100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony"; in (2) substituted current language relating to additional requirements for professional guide for "A professional guide shall have been issued a valid wildlife conservation license"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (1)(c), after "violation of", inserted "this chapter or"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Changed "in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform" to "who is physically capable and mentally competent to perform" in (1)(a); deleted residency requirement; inserted (1)(c) relating to conviction of fish and game law violation; inserted (1)(d) relating to gross negligence or misconduct; inserted (1)(e) relating to conviction of a felony; and changed "resident guide" to "professional guide" and deleted "resident" after "valid" in (2).

Administrative Rules

ARM 24.171.601 Guide or professional guide qualifications.

37-47-304. Application.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 507, L. 2023. Amendment effective July 1, 2023.

2019 Amendments — Composite Section: Chapter 221 in (2)(a) substituted "wildlife conservation license number" for "conservation license number". Amendment effective March 1, 2020.

Chapter 236 in (2)(c)(ii) inserted last sentence concerning when a description is not required. Amendment effective October 1, 2019.

2013 Amendment: Chapter 341 in (1) substituted "outfitter's or guide's license" for "outfitter's, guide's, or professional guide's license"; in (2) substituted current text for former text that read:

"(2) The application for an outfitter's license forms the basis for the outfitter's operations plan and must include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including:

(i) years of experience as an outfitter, guide, or professional guide;

(ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate; and

(iii) the applicant's ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned, leased, or contracted for by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant intends to provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule"; and in (3) in two places substituted "business entity" for references to corporations, proprietorships, or partnerships. Amendment effective October 1, 2013.

2011 Amendment: Chapter 179 in (2)(f) after "leased" inserted "or contracted for"; and made minor changes in style. Amendment effective April 14, 2011.

2005 Amendment: Chapter 467 in (1) at end after "form" substituted "furnished by the department" for "prescribed and furnished by the board"; in (2)(h) after "applicant" substituted "intends to" for "will"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (3) deleted former fourth sentence that read: "The license must specifically state that the license is issued for the use and benefit of the named corporation, proprietorship, or partnership involved"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 328 in (1) inserted reference to guide's license; at beginning of (2) inserted "The application for an outfitter's license forms the basis for the outfitter's operations plan"; in (2)(d) inserted reference to guide's experience; in (2)(e), after "outfitter", substituted "for each guide and professional guide to be employed" for "by whom the professional guide is to be employed", after "independent contractor" inserted "stating", before "professional guide" inserted "guide or", after "is" deleted "in fact", after "employed" deleted "or retained as an independent contractor", and at end substituted "recommends the guide or professional guide for licensure" for "recommends the applicant for the applicant's qualifications"; in (2)(g) substituted "number of participants to be accompanied" for "number of guests to be taken"; inserted (2)(i) relating to boundaries of proposed operation and information relating to services; in (5), near end of first sentence before "license year", deleted "one"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (1)(h) inserted "provide services or"; in (2) in three places inserted references to proprietorships; in (4), after "outfitter's", deleted "or professional guide's"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1)(e), in two places following "employed", inserted "or retained as an independent contractor".

1987 Amendment: In introductory clause substituted "board" for "department"; and in (1)(f) and (3) substituted "board" for "director".

1981 Amendment: Inserted "residence" and "conservation license number, driver's license number, birth date, physical description" in (1)(a); inserted "professional" before "guide" in (1)(d) and (1)(e); changed "a statement by a warden" to "an affidavit by the outfitter" and deleted "has been inspected by the warden and that the same" after "application" in (1)(f); changed "rangers in whose district" to "appropriate agency or landowner on whose lands" and deleted "if the applicant intends to outfit on a national forest" at the end of (1)(h); and inserted "professional" before "guide's" in (4).

37-47-305. Outfitter's examination.

Compiler's Comments

2013 Amendment: Chapter 341 deleted former (2) through (8) that read: "(2) practical woodsmanship;

(3) general knowledge of big game;

(4) field preparation of trophies;

(5) care of game meat;

(6) use of outfitter's gear as listed on the application;

(7) knowledge of area and terrain;

(8) knowledge of firearms"; deleted former (10) that read: "(10) first aid"; deleted former (13) that read: "(13) care and safety of livestock"; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 in first sentence inserted "after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take" and at end of second sentence substituted "participants" for "persons employing the services"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in third sentence substituted "and may include" for "in"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In introductory clause substituted "board or its agent" for "director or an agent designated by him".

1981 Amendment: Inserted "federal and state" before "fish and game laws" in (1); changed "shown" to "listed" in (6); deleted "practical" before "first aid" in (10); and added (11), (12), and (13), concerning boat safety, water safety, and care and safety of livestock, respectively.

Administrative Rules

ARM 24.171.507 Outfitter examination.

37-47-306. Fees.

Compiler's Comments

2013 Amendment: Chapter 341 deleted former (3) that read: "(3) If a nonresident license applicant resides in a state that requires residents of the state of Montana to pay in excess of the amount established by the board for a similar license, then the fee for the nonresident outfitter's, guide's, or professional guide's license must be the same amount as the higher fee charged in the state where the nonresident license applicant resides. A nonresident hunting outfitter is subject to the same rules and regulations that apply to a resident hunting outfitter"; and made minor changes in style. Amendment effective October 1, 2013.

1999 Amendment: Chapter 543 in first sentence in (3) in two places substituted "nonresident license applicant" for "nonresident"; inserted second sentence concerning nonresident hunting outfitter subject to rules and regulations that apply to resident outfitter; and made minor changes in style. Amendment effective April 30, 1999.

1995 Amendment: Chapter 328 at end of (2) substituted "by board rule" for "by the board"; in (3), after "outfitter's", inserted "guide's"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated the 1987 amendments to this section July 1, 1991. Effective March 25, 1991.

1987 Amendment: Throughout section substituted "board" for "department"; deleted last sentence of (3) that read: "All fees collected under this part shall be deposited as provided in 87-1-601"; and in (4) substituted "fees must be deposited in the state special revenue fund and must be used by the board" for "fee shall be used" and inserted "subject to 37-1-101(6)".

1983 Amendment: Inserted (1) requiring fees commensurate with costs; in (2), after "license fee as" substituted "specified by the department" for "herein stipulated, which will be refunded if and when the application is denied:

(a) resident outfitter's license fee................$50;

(b) resident professional guide's fee...............$15;

(c) nonresident outfitter's license fee............$150;

(d) nonresident professional guide's fee............$100"; at beginning of (3), after "If" substituted "a" for "the"; after "excess of" substituted "the amount established by the department" for "such amounts".

Statement of Intent: The statement of intent attached to Ch. 192, L. 1983, provided: "Senate Bill No. 132 requires a statement of intent because section 5 [4, amending 87-4-127 (renumbered 37-47-306)] requires the Department of Fish, Wildlife, and Parks, to establish fees for outfitters and guides. Presently fees charged as [are] set by law, and are not based on actual costs incurred.

It is the intent of the legislature that fees be set by rule by the department which will adequately cover the costs of administering the licensing and regulatory programs relating to outfitters and the ongoing operations of the Montana Outfitters Council [now Board of Outfitters]."

1981 Amendment: Deleted former subsection (2) that provided: "A resident guide's license is a valid Montana wildlife conservation license"; and changed "outfitters or guides" to "outfitter's or professional guide's license".

Administrative Rules

ARM 24.171.401 Fees.

37-47-307. Investigation of applicant — issuance or denial of license.

Compiler's Comments

2013 Amendment: Chapter 341 in (1) substituted "outfitter's or guide's license" for "outfitter's, guide's, or professional guide's license". Amendment effective October 1, 2013.

2003 Amendment: Chapter 271 inserted (4) to provide that this section may not be interpreted to conflict with 37-1-138; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1995 Amendments: Chapter 328 in (1), after "outfitter's", inserted "guide's"; in (2) substituted "in this chapter or rules adopted pursuant to this chapter" for "in this section"; deleted former (3) that read: "(3) Final decision as to issuance of renewal licenses must be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license"; in (3), after "chapter", substituted "or rules adopted pursuant to this chapter" for "and renewal deadlines and fees imposed by rule of the board"; and made minor changes in style.

Chapter 429 in (1), at beginning of first sentence, substituted "department" for "board" and at beginning of second sentence inserted "The board shall"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 220 in (4), after "chapter", inserted "and renewal deadlines and fees imposed by rule of the board and" and after "provided by the board" deleted "and payment of the renewal fee, but is exempt from having to retake the written examination"; deleted (5) that read "(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of $50 will be charged in addition to the regular resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license"; and made minor changes in style. Amendment effective July 1, 1993.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated the 1987 amendments to this section July 1, 1991. Effective March 25, 1991.

1987 Amendment: In (1) in temporary version substituted language directing Board to investigate an applicant's qualifications for "The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's or professional guide's license and an applicant's qualifications as he considers advisable"; in (2), in two places, substituted "board" for "director"; in (4) substituted "chapter" for "part" and "board" for "department" and inserted "and payment of the renewal fee"; and made minor changes in phraseology.

1983 Amendment: Near middle of (5), after "license" inserted "fee".

1981 Amendment: Inserted "or professional guide's" before "license" in (1); inserted "and completing an application for license renewal on a form provided by the department" in (4); and added (5) requiring application for license renewal by January 1.

37-47-308. Kinds of licenses.

Compiler's Comments

1993 Amendment: Chapter 220 at beginning of (1) substituted "When all the conditions of licensure have been satisfied" for "After receipt of the application and when all the conditions and requirements of this part have been satisfied" and after "board shall issue" substituted "a license stating the outfitter or guide functions that the applicant is qualified and approved to perform" for "either of the following licenses, depending upon its determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 37-47-101; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (1) substituted "board" for "director" and "its determination" for "his determination"; and in (3) substituted "board" for "director".

37-47-310. Transfer or amendment of outfitter's license — partial sale of outfitter business.

Compiler's Comments

2021 Amendment: Chapter 281 in (2) near middle substituted "operating plan" for "license"; and substituted current (4) providing for a partial sale or temporary transfer of an outfitter's business and limiting the transfer of river-use days on the Beaverhead and Big Hole Rivers for former (4) (see 2021 Session Law for former text). Amendment effective April 22, 2021.

Transition — Applicability: Section 14, Ch. 281, L. 2021, provided: "Within 60 days of [the effective date of this act] [April 22, 2021], the board membership must reflect [section 1] [2-15-1773]. All terms of all board members appointed under the previous composition of the board terminate 60 days following [the effective date of this act] [April 22, 2021], and all appointments made, and vacancies filled after [the effective date of this act] [April 22, 2021] must be in accordance with [section 1] [2-15-1773]. The appointments must consist of 1, 2, or 3-year terms at the governor's discretion, so the initial terms of the newly composed board members are staggered in accordance with [section 1] [2-15-1773]."

Severability: Section 16, Ch. 281, L. 2021, was a severability clause.

2013 Amendments — Composite Section: Chapter 235 in (4)(a) near end substituted "fish and wildlife commission" for "fish, wildlife, and parks commission"; inserted (4)(b) concerning transferred river-use days on the Smith River; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 341 in (2) substituted "business entity" for "proprietorship, partnership, or corporation". Amendment effective October 1, 2013.

Saving Clause: Section 40, Ch. 235, L. 2013, was a saving clause.

2011 Amendment: Chapter 100 in (3) after "by the family of" substituted current text for "a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business". Amendment effective October 1, 2011.

2005 Amendment: Chapter 197 in (1) at end after "transferred" deleted "during any license year"; in (3) near beginning after "board" substituted "a person designated by" for "an immediate member of"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 91 inserted (4) providing that upon the sale or transfer of an outfitter's business, river-use days are transferable to the new owner and requiring an outfitter to notify the new owner that river-use days are subject to change by the fish, wildlife, and parks commission. Amendment effective March 24, 2003.

1993 Amendment: Chapter 220 near end of (2) inserted "proprietorship"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (3) substituted "board" for "director".

1981 Amendment: Added (3) relating to the continued operation of a deceased outfitter's operation.

Administrative Rules

ARM 24.171.701 Net client hunter use (NCHU) categories, transfers, and records.

37-47-311. Limit one license.

Compiler's Comments

2013 Amendment: Chapter 341 in (1) in two places substituted "business entity" for "partnership, limited liability partnership, limited liability company, or corporation"; in (2) substituted current language for "within more than one operation plan filed with the board"; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendment: Chapter 197 near end of first sentence and near beginning of second sentence after "partnership" inserted "limited liability partnership, limited liability company", at end of first sentence after "corporation" deleted "nor may the", and in second sentence after "corporation" inserted "may" and at end after "license" inserted "and within more than one operation plan filed with the board"; and made minor changes in style. Amendment effective October 1, 2005.

37-47-313. Shuttle, rental services, drop camp, and accompaniment — exemption

Compiler's Comments

2021 Amendment: Chapter 281 in (1) near middle substituted "shuttle, rental services, drop camp, or the accompaniment of a customer for nonhunting activities, nonfishing activities, or both," for "shuttle or rental services"; and substituted current (2) for former (2) (see 2021 Session Law for former text). Amendment effective April 22, 2021.

Transition — Applicability: Section 14, Ch. 281, L. 2021, provided: "Within 60 days of [the effective date of this act] [April 22, 2021], the board membership must reflect [section 1] [2-15-1773]. All terms of all board members appointed under the previous composition of the board terminate 60 days following [the effective date of this act] [April 22, 2021], and all appointments made, and vacancies filled after [the effective date of this act] [April 22, 2021] must be in accordance with [section 1] [2-15-1773]. The appointments must consist of 1, 2, or 3-year terms at the governor's discretion, so the initial terms of the newly composed board members are staggered in accordance with [section 1] [2-15-1773]."

Severability: Section 16, Ch. 281, L. 2021, was a severability clause.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

37-47-325. Outfitter's assistants — exemption from licensing.

Compiler's Comments

2017 Amendment: Chapter 217 in (3) after "employment as" substituted "required by the board by rule" for "provided in 37-47-404(4)(b) pending adoption of proof of employment by the board by rule". Amendment effective October 1, 2017.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

Effective Date: Section 10, Ch. 241, L. 2013, provided: "[This act] is effective September 1, 2013."

Termination: Section 11, Ch. 241, L. 2013, provided: "[This act] terminates August 31, 2015."

37-47-341. Grounds for denial, suspension, or revocation of license.

Compiler's Comments

2021 Amendment: Chapter 281 in (8) at beginning inserted "subject to 27-1-753"; and made minor changes in style. Amendment effective April 22, 2021.

Transition — Applicability: Section 14, Ch. 281, L. 2021, provided: "Within 60 days of [the effective date of this act] [April 22, 2021], the board membership must reflect [section 1] [2-15-1773]. All terms of all board members appointed under the previous composition of the board terminate 60 days following [the effective date of this act] [April 22, 2021], and all appointments made, and vacancies filled after [the effective date of this act] [April 22, 2021] must be in accordance with [section 1] [2-15-1773]. The appointments must consist of 1, 2, or 3-year terms at the governor's discretion, so the initial terms of the newly composed board members are staggered in accordance with [section 1] [2-15-1773]."

Severability: Section 16, Ch. 281, L. 2021, was a severability clause.

2013 Amendment: Chapter 341 in (5) inserted "or other jurisdictions"; in (7) after "guide" deleted "or professional guide"; in (8) substituted "outfitter or guide" for "outfitter, guide, or professional guide"; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 502 in (4) deleted former second sentence that read: "A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended." Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1995 Amendment: Chapter 328 in introductory clause, after "license", inserted "issued under this part" and after "revoked" inserted "or other disciplinary conditions may be applied"; in (1), at end, inserted "as required under this chapter and rules adopted pursuant to this chapter"; in (4) inserted last sentence relating to deferred or suspended felony sentence; in (5) substituted "one conviction or bond forfeiture as to a violation" for "two convictions or bond forfeitures of $100 or more as to violations" and after "United States" deleted "within the past 5 years"; in (6) substituted "with a participant" for "with any person using the services of the license holder"; in (7) inserted "or professional guide"; in (8), after "outfitter", inserted "guide" and at end substituted "property of a participant" for "property of any client of the outfitter or professional guide"; inserted (10) relating to violation of chapter or rule; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1993 Amendment: Chapter 220 in introductory clause inserted "denied"; in (5) substituted "any state" for "the state of Montana"; in (7), after "unlicensed", deleted "professional"; inserted (9) concerning misconduct; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (7) inserted "or contracting with".

1981 Amendment: Rewrote (4) (see 1981 Session Law), which formerly read: "conviction of a felony, until civil rights are restored or until time of any deferred sentence for a felony has expired"; added "within the past 5 years" to (5); inserted "professional" before "guide" in (7); and inserted "professional" before "guide" twice and changed "which negligence or misconduct causes a danger or unreasonable risk of danger to person" to "that causes an accident or injury to person" in (8).

Administrative Rules

ARM 24.171.2301 Unprofessional conduct and misconduct.

37-47-343. Appeal procedure.

Compiler's Comments

2013 Amendment: Chapter 341 substituted "outfitter or guide" for "outfitter, guide, or professional guide". Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 after "outfitter" inserted "guide"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1993 Amendment: Chapter 220 substituted language regarding judicial review of final order concerning denial of or suspension or revocation of a license for former language providing an appeal to the District Court (see 1993 Session Law for text). Amendment effective July 1, 1993.

1987 Amendment: Throughout section changed references to Director to references to Board.

1981 Amendment: Inserted "professional" before "guide" in the first sentence; and changed "commission" to "director" throughout the section.

37-47-351. Investigators.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (2) that read: "(2) To qualify as an investigator, a person must:

(a) be a citizen of the United States and be a Montana resident;

(b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide, or professional guide or as a regulator of the outfitting profession; and

(c) have not less than 2 years' experience as a licensed private investigator or as an investigator, detective, special agent, or peace officer of a city, county, or state or of a federal agency"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Effective Date: Section 25, Ch. 328, L. 1995, provided that this section is effective July 1, 1995.

Part 4

Relative Duties of Outfitters, Guides, and Participants

Part Case Notes

Application of Federal Lacey Act to Outfitting and Guiding — Statute of Limitations on Charges of Conspiracy: While a prosecution under the federal Lacey Act, 16 U.S.C. § 3371, et seq., which prohibits transportation or acquisition in interstate commerce of wildlife in violation of state laws, may not properly be had for the substantive acts of selling guiding services and hunting permits, a prosecution can be maintained for conspiracies to violate the Act while providing outfitting and guiding services, such as arranging for out-of-state hunters to use elk licenses and permits belonging to other hunters, knowing that any elk taken would be transported out of state. The Act applied when evidence was sufficient to establish the involvement of defendant, a hunting guide and outfitter, in a conspiracy to transport elk in interstate commerce in violation of Montana law. Further, the 5-year "catchall" statute of limitations set out in 18 U.S.C. § 3282 applied to charges of conspiring to violate the Act. U.S. v. Thomas, 887 F2d 1341 (9th Cir. 1989), distinguishing U.S. v. Stenberg, 803 F2d 422 (9th Cir. 1986).

37-47-401. Purpose.

Compiler's Comments

2021 Amendment: Chapter 281 in (1) in second sentence near beginning inserted "subject to 27-1-753"; and made minor changes in style. Amendment effective April 22, 2021.

Transition — Applicability: Section 14, Ch. 281, L. 2021, provided: "Within 60 days of [the effective date of this act] [April 22, 2021], the board membership must reflect [section 1] [2-15-1773]. All terms of all board members appointed under the previous composition of the board terminate 60 days following [the effective date of this act] [April 22, 2021], and all appointments made, and vacancies filled after [the effective date of this act] [April 22, 2021] must be in accordance with [section 1] [2-15-1773]. The appointments must consist of 1, 2, or 3-year terms at the governor's discretion, so the initial terms of the newly composed board members are staggered in accordance with [section 1] [2-15-1773]."

Severability: Section 16, Ch. 281, L. 2021, was a severability clause.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 in two places after "professional guides" inserted "and outfitter's assistants"; and made minor changes in style. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 in two places substituted "outfitters and guides" for "outfitters, guides, and professional guides". Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 in two places, after "guides", inserted "professional guides"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

37-47-402. Duties of outfitters and guides.

Compiler's Comments

2013 Amendment: Chapter 341 near beginning substituted "outfitter or guide" for "outfitter, guide, or professional guide". Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 in introductory clause, after "guide", inserted "professional guide"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (2), at end, substituted "board" for "department of fish, wildlife, and parks"; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 18, Ch. 220, L. 1993, was a severability clause.

Administrative Rules

ARM 24.171.412 Safety provisions.

37-47-403. Duties of participants.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 in (1)(a) near end inserted "or by an unlicensed outfitter's assistant"; in (2)(a) and in (2)(b) in two places inserted reference to outfitter's assistant; in (2)(a) at end inserted "or 37-47-405"; and made minor changes in style. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 in (1)(a), (1)(b) in two places, (2)(a), and (2)(b) in two places substituted references to outfitter or guide for references to outfitter, guide, or professional guide. Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 throughout section, after references to guide, inserted references to professional guide; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

37-47-404. Responsibility for violations of law.

Compiler's Comments

2017 Amendment: Chapter 217 in (4) at beginning deleted "Except as provided in subsection (4)(b)"; deleted former (4)(b) that read: "(b) (i) Prior to adoption of the rules, an outfitter may use temporary documentation to place a hired or retained outfitter's assistant in a position of providing services to participants. The temporary documentation must be mailed to the board within the time period of the outfitter's assistant's service, and a copy must be provided to the outfitter's assistant. The outfitter's assistant shall carry the temporary documentation at all times in the field.

(ii) The temporary documentation must include the following:

(A) the outfitter's name, license number, and contact information;

(B) the outfitter's assistant's name and home address and the starting date and expiration date for the period of service;

(C) a brief explanation of why an emergency replacement is needed; and

(D) the outfitter's signature, which must be on the original and on the copy of the temporary documentation and must affirm the provisions in this subsection (4)(b)(ii).

(iii) The outfitter shall collect the temporary documentation from the outfitter's assistant after the period of service.

(iv) The temporary documentation may not be used after adoption of the rules under 37-47-201(4)(e)"; and made minor changes in style. Amendment effective October 1, 2017.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 in (1) in six places and in (2) in two places after "professional guide" inserted "or outfitter's assistant"; inserted (4) regarding requirements for outfitter to use outfitter's assistant to provide services; and made minor changes in style. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 throughout section substituted "outfitter or guide" for "outfitter, guide, or professional guide"; in (1) in third sentence in two places and in (3) in second sentence in two places after "guide" deleted "or professional guide"; in (1) in third sentence substituted "actual knowledge" for "actual or implied knowledge"; and in (2) after "knows" deleted "or reasonably should have known" and after "employees" inserted "contractors". Amendment effective October 1, 2013.

2009 Amendment: Chapter 109 in (1) near beginning of first sentence after "professional guide" deleted "or other employee of the outfitter", after "party" substituted "engaging" for "employing", and near end in two places after "professional guide" deleted "or employee", in second sentence near beginning after "professional guide" deleted "or other employee of an outfitter" and at end substituted "chapter" for "section", and in third sentence near middle after "outfitter" substituted "engaging" for "employing"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 328 in (1), in first and second sentences in four places, substituted "guide, professional guide" for "agent" and in third sentence, after "If any", inserted "guide or" and after "employing the guide" inserted "or professional guide"; in (2), at beginning after "An outfitter", inserted "guide" and near middle, after "guide", inserted "professional guide"; in (3), in first sentence in two places after "outfitter", deleted "or professional guide" and inserted second sentence requiring endorsement of guide or professional guide; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (1), at end of first sentence after "fish and game laws", inserted remainder of sentence concerning reporting of violation and the lack of participation by the outfitter or an agent; inserted (2) concerning reporting of violations; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 18, Ch. 220, L. 1993, was a severability clause.

1981 Amendment: Changed "the law" to "fish and game laws" twice in first sentence of (1).

Case Notes

Three-Year Statute of Limitations Reasonable for Prosecution of Misdemeanor Fish and Game Violations — Equal Protection and Due Process Not Violated: Defendant was charged with five misdemeanor fish and game and outfitter violations that occurred nearly 2 years earlier. Although misdemeanor violations must generally be charged within 1 year, 45-1-205(5) and (6) allow charges for misdemeanor fish and game crimes to be brought within 3 years of violation. Defendant contended that the extended statute of limitations for charging fish and game crimes violated equal protection and due process guarantees. The District Court reviewed the legislative history of 45-1-205(5) and (6) and concluded that the extended statute of limitations served a reasonable relation to the proper legislative purpose of protecting wildlife and that in order to effectively enforce fish and games laws, additional time to discover and investigate fish and game violations was warranted. The Supreme Court agreed. A separate class of misdemeanors for fish and game violations did not violate equal protection because all persons who commit such crimes are in a similarly situated class and subject to the same treatment. Further, because fish and game and outfitter violations sometimes require investigation over several hunting seasons and involve perpetrators who reside out of state, an extended statute of limitations is a reasonable exercise of the state's legitimate police power in preserving wildlife and does not violate substantive due process. St. v. Egdorf, 2003 MT 264, 317 M 436, 77 P3d 517 (2003).

37-47-405. Duties of outfitter's assistants.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

Effective Date: Section 10, Ch. 241, L. 2013, provided: "[This act] is effective September 1, 2013."

Termination: Section 11, Ch. 241, L. 2013, provided: "[This act] terminates August 31, 2015."

CHAPTER 49
GENETIC COUNSELING

Chapter Compiler's Comments

Effective Date: Section 9, Ch. 206, L. 2021, provided that this chapter is effective on passage and approval. Approved April 16, 2021.

Chapter Administrative Rules

Title 24, chapter 148, ARM Genetic counselors.

CHAPTER 50
PUBLIC ACCOUNTANTS

Chapter Compiler's Comments

Severability Clause: Section 31, Ch. 118, L. 1969, was a severability clause.

Chapter Administrative Rules

Title 24, chapter 201, ARM Board of Public Accountants.

Chapter Case Notes

Elements of Negligent Misrepresentation Action Against Accountant: In a case in which two banks brought an action against an accounting firm for damages caused by an unqualified audit statement, the Supreme Court set forth the elements of a third-party negligent misrepresentation claim against an accountant under Restatement (Second) of Torts 552. W. Sec. Bank v. Eide Bailly, LLP, 2010 MT 291, 359 Mont. 34, 249 P.3d 35.

Professional Negligence and Negligent Misrepresentation Distinguished — Restatement of Torts 552 Controls Third-Party Negligent Misrepresentation — Accountant's Duty of Care to Third Parties: After Eide Bailly, an accounting firm, issued an unqualified opinion stating that an audit of IMC, a mortgage company, showed that its financial statements didn't contain misstatements, the holding company owning IMC was purchased by plaintiff Glacier Bank, which merged the holding company into plaintiff Western Bank. When it was later discovered that an employee of IMC had manipulated IMC's financial records to make IMC appear more profitable than it was, the plaintiffs sued Eide Bailly, alleging that Eide Bailly owed a duty of care to the plaintiffs. The Supreme Court affirmed the District Court's ruling that no duty of care was owed. Citing Jim's Excavating Service v. HKM Associates, 265 Mont. 494, 878 P.2d 248 (1994), and the Restatement (Second) of Torts, 552 (1977), the Supreme Court held that the plaintiffs had failed to rebut the affidavits from Eide Bailly that it didn't intend to supply the information to the plaintiffs and that it didn't know the plaintiffs would receive the accounting statement. The Supreme Court therefore affirmed the District Court's grant of summary judgment for defendant Eide Bailly. Relying upon Jim's Excavating, the Supreme Court also distinguished professional negligence claims from claims for third-party negligent misrepresentation claims but treated the case before the court as a case of third-party negligent misrepresentation. W. Sec. Bank v. Eide Bailly, LLP, 2010 MT 291, 359 Mont. 34, 249 P.3d 35.

Part 1
General

37-50-101. Definitions.

Compiler's Comments

2017 Amendment: Chapter 162 in definition of attest in (e) at beginning inserted "an examination, other than an examination as provided in subsection (3)(c), a review, or"; deleted definition that read: ""Home office" is the location specified by the client as the address where a service described in 37-50-325(4) is directed"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in definition of firm inserted "sole practice"; in definition of peer review before "licensee" deleted "permittee or"; in definition of practice of public accounting substituted "licensed as a certified public accountant" for "certified under 37-50-302, licensed under 37-50-303" and in (b) after "consulting services" inserted "as determined by the board"; inserted definition of satellite office; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 inserted definitions of affiliated entity, agreed-upon procedures engagement, attest, compilation, firm, home office, peer review, principal place of business, and substantial equivalency; in definition of practice of public accounting near middle after "37-50-303" inserted "or holding a practice privilege under 37-50-325"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1989 Amendment: Inserted definition of practice of public accounting. Amendment effective July 1, 1989.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in definition of department; changed internal references to the department and the board.

Administrative Rules

ARM 24.201.301 Definitions.

37-50-102. Exemptions.

Compiler's Comments

2015 Amendment: Chapter 169 in three places after references to certified public accountant deleted references to licensed public accountant, in middle substituted "license" for "permit" and substituted "37-50-302 or" for "37-50-314", and after "this chapter" deleted "or a foreign accountant whose credentials have been recognized under 37-50-313". Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 near middle of first sentence before "composed" substituted "firm" for "partnership or corporation". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendment: Chapter 375 in first sentence near end after "foreign accountant" deleted "registered" and inserted reference to recognition of credentials; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1983 Amendment: Substituted "permit" for "license" before "to practice under 37-50-314".

Part 2
Board of Public Accountants

Part Administrative Rules

Title 24, chapter 201, subchapter 1, ARM Organizational rule.

Title 24, chapter 201, subchapter 2, ARM Procedural rules.

37-50-201. Organization — general rulemaking power — seal — records.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former (3) that read: "(3) A quorum for the transaction of business consists of three members of the board"; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: In (1) deleted reference to treasurer.

Administrative Rules

Title 24, chapter 201, ARM Board of Public Accountants.

37-50-202. Compensation of members — expenses.

Compiler's Comments

1981 Amendment: Substituted section (see 1981 Session Law) for former text that read: "Each member of the board while actually engaged in the duties of his office is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one-fourth the daily rate of a grade 8, step 1, classified state employee, for every 6 hours or fraction thereof spent away from home on board business".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-50-203. Rules of board.

Compiler's Comments

2015 Amendment: Chapter 169 deleted former (2)(b) that read: "(b) rules of procedure governing the conduct of matters before the board"; in (2)(b) substituted "license" for "certificate" and after "accountant" deleted "and the license for licensed public accountant"; in (2)(c) substituted "license" for "permit"; deleted former (3)(b) that read: "(b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(ii) prescribing joint and several liability for torts relating to professional services for shareholders of a firm or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i)"; in (3)(b) after "seeking" deleted "permits, certificates, or"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 in (3)(a) at beginning after "governing" substituted "firms" for "partnerships, corporations"; in (3)(b)(ii) after "shareholders of a" substituted "firm" for "corporation"; in (3)(c) after "seeking" substituted "permits, certificates, or licenses" for "authorization"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendment: Chapter 375 deleted former (2)(d) that read: "(d) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any corporation failing to comply with the standards"; inserted (3) allowing adoption of rules governing entities practicing public accounting, standards of professional liability insurance and unimpaired capital, and education and experience qualifications for out-of-state and foreign accountants; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1997 Amendment: Chapter 492 in (2)(e), near end after "the initial", deleted "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted former (2)(d) that read: "(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states"; deleted former (2)(f) that read: "(f) internal rules considered necessary to initiate and conduct investigations and protect the confidences of the client of any certified public accountant or licensed public accountant subjected to board disciplinary proceedings"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: In (2)(c) inserted "as provided in 37-50-305"; deleted former (2)(f) that read "rules setting forth the terms, not exceeding 2 years, and areas of experience required for certification as a certified public accountant and licensing as a licensed public accountant"; inserted (2)(f) referring to internal rules; inserted (2)(g) referring to rules defining accounting experience requirements; inserted (2)(h) referring to other rules required to enforce chapter; deleted (3), which read: "At least 60 days prior to the adoption of a rule or amendment, the department shall mail copies of the proposed rule or amendment to each holder of a certificate or license issued under 37-50-314, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments on it at least 15 days prior to the effective date. These comments are advisory only. The department's certificate of mailing to licensed accountants is conclusive proof thereof."

1983 Statement of Intent: The statement of intent attached to Ch. 335, L. 1983, provided: "This bill requires a statement of intent because it requires rulemaking by the Board of Public Accountants.

Under new subsections added to section 37-50-203, the Board must adopt internal rules to preserve the confidences of clients of investigated public accountants, rules defining experience requirements, and rules for investigations and enforcement of the law and board rules. The internal rules required are intended to prevent disclosure by board members and employees of facts learned through board investigations which the client of the investigated party, who may be unaware of the investigation, never consented to. The Legislature believes this to be a sensitive area, as investigations may or may not result in civil and criminal charges and may even result in legal action by others against the client. Rules governing experience required by the Board must require only so much experience as is necessary for the protection of the public and must not impede access to the profession by those persons reasonably well qualified. Enforcement rules must create a positive enforcement program which will require application of continuing education principles for persons who, among others, may be close to violations of the law but for which other disciplinary action is not warranted."

Existing Orders and Rules Effective Until Revoked or Modified: Section 22, Ch. 684, L. 1979, provided: "All orders and rules relating to the practice of accounting made by the board of public accountants prior to July 1, 1979, remain in effect until revoked or modified in accordance with law."

1979 Statement of Intent: The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "1. The Board may establish rules setting standards for determining a practitioner's competency in specialized fields of accounting. It is contemplated the rules should address the following:

(a) the fields of specialized practice such as auditing of financial institutions, auditing of governmental entities, estate tax planning and other fields requiring specialized knowledge;

(b) types of programs required for determining competency such as classroom instruction, seminars, homestudy, experience, examination or any combination thereof;

(c) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, course content and endorsement by other regulatory agencies or professional or educational groups;

(d) the number of hours of instruction or experience, if any, required;

(e) contents of examinations, if any, required;

(f) alternative methods of fulfilling the requirements such as intrafirm or company programs and a provision for waiver of the requirements for hardship.

The rules may not prohibit the person holding a license or certificate from practicing in any area or field of public accounting nor affect his ability to acquire annual renewal of his certificate or license.

2. The Board may establish rules governing education requirements for certification or licensure. It is contemplated that the rules should supplement and interpret 37-50-305 as amended by the bill by:

(a) making determinations as to recognized colleges and universities. The Board may use the University System schools of business as a yardstick;

(b) determining standards for accepting college graduates with majors other than accounting, including but not limited to:

(i) the minimum number of accounting credits required;

(ii) subjects of courses allowed as supplementary business-related courses; and

(iii) the total number of credits required in business administration.

3. The Board may adopt rules prescribing continuing education for continued practice in public accounting. It is contemplated that they should address the following:
(a) types of programs required for determining knowledge and competence such as classroom instruction, seminars, homestudy, experience, examination, or any combination thereof;
(b) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, course content and endorsement by other regulatory agencies or professional or national groups;
(c) the number of hours of instruction or experience, if any, required;
(d) contents of examinations, if any, required;
(e) alternative methods of fulfilling the requirements such as intrafirm or intracompany programs or prospective programs of study;
(f) methods of monitoring and enforcement;
(g) the rules may not deny a person the ability to acquire annual renewal of his certificate or license if continuing education requirements constitute a hardship due to inaccessibility to programs or interference with an interstate practice;
(h) the rules should reflect standards for continuing education programs to ensure equal access, reasonable cost, exceptions for financial or physical hardships or impediments and reference to areas commonly and not rarely practiced by those engaged in public accounting.
4. The Board may establish rules governing partnerships and corporations practicing public accountancy. It is contemplated that the rules should address the following:
(a) the financial ability of a partnership or corporation to protect the public from damages caused by negligence or malpractice, if any;
(b) the method of establishing financial ability such as unimpaired capital, professional liability insurance, self-insurance or mutual insurance, or agreement;
(c) other areas of regulation regarding firm style, name, title, affiliations, and joint and several liability of members or shareholders are governed by existing statutory law regulating partnerships and professional corporations.
5. The Board may establish rules setting forth terms, not exceeding two years, and areas of experience for original certification or licensure. It is contemplated that the rules should address the following:
(a) the duration of experience required, not to exceed two years;
(b) the areas of experience such as private, public or governmental accounting, or accounting experience as an educator, researcher, publisher or military serviceman, or combination thereof;
(c) the rules should not discriminate between the areas of experience."

Administrative Rules

Title 24, chapter 201, subchapter 1, ARM Organizational rule.
Title 24, chapter 201, subchapter 2, ARM Procedural rules.
Title 24, chapter 201, subchapter 5, ARM Licensing and examinations.
Title 24, chapter 201, subchapter 11, ARM Profession monitoring rules.
Title 24, chapter 201, subchapter 21, ARM Renewal and continuing education.
Title 24, chapter 201, subchapter 24, ARM Complaint procedures.

37-50-204. Rulemaking powers relating to examinations.

Compiler's Comments

2003 Amendment: Chapter 196 at end of (1) after "candidate" substituted "shall obtain credit for passing the required examination or portions of the examination" for "who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed"; substituted (2) concerning period for reexamination for former text that read: "a reasonable waiting period for a candidate's reexamination in a subject he has failed"; deleted former (3) that read: "(3) the maximum number of reexaminations for which a candidate may apply"; in (3) deleted former second sentence that read: "With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined"; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 24.201.410 Fee schedule.
Title 24, chapter 201, subchapter 5, ARM Licensing and examinations.

37-50-205. Duties of department.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 183, L. 2023, repealed sec. 10, Ch. 427, L. 2015, and sec. 5, Ch. 50, L. 2019, which terminated the 2015 amendments to this section September 30, 2023. Effective April 19, 2023.

Extension of Termination Date: Section 5, Ch. 50, L. 2019, amended sec. 10, Ch. 427, L. 2015, by extending the termination date imposed by Ch. 427 to September 30, 2023. Effective July 1, 2019.

2015 Amendment: Chapter 427 inserted (3) regarding balance of funds in the enterprise fund; and made minor changes in style. Amendment effective October 1, 2015, and terminates September 30, 2019.

37-50-209. Enterprise fund.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 183, L. 2023, repealed sec. 10, Ch. 427, L. 2015, and sec. 5, Ch. 50, L. 2019, which terminated this section September 30, 2023. Effective April 19, 2023.

Extension of Termination Date: Section 5, Ch. 50, L. 2019, amended sec. 10, Ch. 427, L. 2015, by extending the termination date imposed by Ch. 427 to September 30, 2023. Effective July 1, 2019.

Effective Date: This section is effective October 1, 2015.

Termination: Section 10, Ch. 427, L. 2015, provided that this section terminates September 30, 2019.

Part 3
Licensing

37-50-301. Illegal use of title.

Compiler's Comments

2017 Amendment: Chapter 162 in (5) after “37-50-330 and” deleted “is registered as required under” and in (6) after “37-50-330 and” deleted “registered under”. Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in (1) and (3) at end substituted “37-50-335(4)” for “37-50-335(2)”; in (2) near end substituted “license” for “certificate” and deleted former last sentence that read: “However, a foreign accountant whose credentials are recognized under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received”; in (4) substituted ““licensed certified public accountant”” for ““licensed public accountant””, substituted “or any” for ““public accountant” or any of the abbreviations “CA”, “EA”, “LA”, or “RA” or similar”, and substituted “may use” for “whose credentials are recognized under 37-50-313 shall use”; deleted former (4) and (5) that read: “(4) A person may not assume or use the title or designation “licensed public accountant”, “public accountant”, or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.

(5) A firm may not assume or use the title or designation “licensed public accountant”, “public accountant”, or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the firm is composed of public accountants unless it is registered as required under 37-50-335”; in (5) substituted “offering attest services and compilations” for “having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement”; in (6) after ““certified public accountant”” deleted “or “public accountant””; deleted former (7) that read: “(7) A person may not sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor

do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 inserted (1) permitting certain unregistered firms if they comply with the exemption requirements of 37-50-335(2); in (2) at end of first sentence after "chapter" inserted "or qualifies for the practice privilege under 37-50-325"; in (3) in two places substituted "firm" for "partnership or corporation" and at end after "37-50-335" inserted "or meets the conditions to be exempt from registration as set forth in 37-50-335(2)"; in (5) in two places substituted "firm" for "partnership or corporation"; in (6) at beginning after "person" substituted "or firm" for "corporation, or partnership"; in (8) in three places substituted "firm" for "partnership or corporation"; in (9) in first sentence in two places substituted "firm" for "partnership or corporation" and at end of second sentence after "partner" inserted "or co-owner"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendment: Chapter 375 in (1) and (5) in second sentence after "foreign accountant" substituted "whose credentials are recognized" for "who has registered". Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

2001 Amendment: Chapter 123 in (1) in second sentence after "37-50-313" substituted "shall" for "may"; in (2) at end substituted "certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335" for "certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335"; in (4) near end after "registered" deleted "under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered"; in (5) in second sentence after "37-50-313" substituted "shall" for "may" and at end inserted phrase relating use of "EA" by an enrolled agent; in (7) at end substituted "corporation conforms to the requirements of 37-50-330 and is registered as required under 37-50-335" for "corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335"; in (8) at end of first sentence substituted "corporation that has been formed subject to the provisions of 37-50-330 and registered under 37-50-335" for "corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334"; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: At end of first sentence of (1), substituted "unless such person holds a current certificate as a public accountant under this chapter." for "unless such person has received a certificate as a certified public accountant in some state and is certified under 37-50-302, 37-50-310, or 37-50-311 and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335."; at end of (3) substituted "unless such person holds a current license as a licensed public accountant under this chapter." for "unless such person is licensed as a public accountant under this chapter, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335 or unless such person has received a certificate as a certified public accountant in some state, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335."; in (5) inserted "who has registered under 37-50-313" after "However, a foreign accountant"; in (6) substituted "permit" for "license" before "issued under 37-50-314".

1981 Amendment: Substituted "his country" for "this country" in (5).

Administrative Rules

ARM 24.201.415 Use of CPA/LPA designation.

37-50-302. Certified public accountants — licensure — qualifications and requirements.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 3 in (2) substituted "certified public accountant examination" for "certified public accountants' examination". Amendment effective October 1, 2019.

Chapter 50 in (4) substituted "a professional ethics course for certified public accountants as identified in board rule" for "the professional ethics for CPAs course of the American institute of certified public accountants or its successor organization as defined in board rule". Amendment effective July 1, 2019.

2015 Amendment: Chapter 169 near beginning substituted "license" for "certificate"; in (3) inserted "and accounting experience"; inserted (4) regarding professional ethics requirement; and made minor changes in style. Amendment effective October 1, 2015.

1983 Amendment: Rewrote introductory clause from "Certification as a certified public accountant is available to any person who:".

Administrative Rules

ARM 24.201.501 Education requirements.
ARM 24.201.502 Accounting and auditing experience requirements.
ARM 24.201.510 Examinations.
ARM 24.201.516 Granting of examination credit.
ARM 24.201.517 Acceptance of examination credits.

37-50-305. Education requirements — definition.

Compiler's Comments

2019 Amendment: Chapter 50 inserted (2) concerning continuing education credits; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 169 substituted (1) concerning qualifications for licensure for former (1) that read: "(1) A candidate for initial certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with an accounting concentration or its equivalent as determined by the board; and

(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent"; in (2) substituted ""initial licensure" means that the applicant has never been licensed as a certified public accountant" for ""initial certification" means that the candidate has never been certified as a certified public accountant or licensed as a licensed public accountant"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 196 deleted former (1) that read: "(1) Prior to July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with a concentration in accounting; or

(b) with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved"; at beginning of (1) deleted "Beginning July 1, 1997" and before "certification" inserted "initial"; inserted (2) defining initial certification; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: At beginning of (1) inserted "prior to July 1, 1997"; inserted (2) providing requirements for certification as public accountant; and made minor changes in form. Amendment effective July 1, 1989.

1983 Amendment: In (2), inserted "experience or by" before "related courses".

Statement of Intent: The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "The Board may establish rules governing education requirements for certification or licensure. It is contemplated that the rules should supplement and interpret 37-50-305 as amended by the bill by:

(a) making determinations as to recognized colleges and universities. The Board may use the University System schools of business as a yardstick;

(b) determining standards for accepting college graduates with majors other than accounting, including but not limited to:

(i) the minimum number of accounting credits required;
(ii) subjects of courses allowed as supplementary business-related courses; and
(iii) the total number of credits required in business administration."

Section Not Codified: Section 66-1823, R.C.M. 1947, a temporary section dealing with education and experience requirements for licensure between December 31, 1971, and January 1, 1975, has not been codified in the MCA. However, the statute has not been repealed and is still valid law. Citation may be made to sec. 11, Ch. 118, L. 1969.

Administrative Rules

ARM 24.201.501 Education requirements.

37-50-309. Credit for examinations taken in other jurisdictions.

Compiler's Comments

2015 Amendment: Chapter 169 substituted current language allowing credit for completion of uniform certified public accountant examination for former section text that read: "The board may by rule provide for granting credit to a candidate for the satisfactory completion of an examination in any one or more of the subjects of examination given by the licensing authority in another jurisdiction." Amendment effective October 1, 2015.

2003 Amendment: Chapter 196 near middle before "examination" deleted "written" and at end substituted "jurisdiction" for "state" and deleted former second sentence that read: "These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination"; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 24.201.517 Acceptance of examination credits.
ARM 24.201.528 Licensure of out-of-state applicants.
ARM 24.201.529 Licensure of foreign-trained applicants.

37-50-314. License required — proof of licensure.

Compiler's Comments

2015 Amendment: Chapter 169 in (1) in two places and in (2) substituted "license" for "permit"; in (1) after "a person who" deleted "holds a current certificate as a certified public accountant or license as a licensed public accountant and"; in (2) substituted "practice public accounting" for "engage in the practice of public accounting" and substituted "presented as proof of licensure upon request by a client" for "prominently displayed for public inspection"; in (3) at beginning inserted "Upon request from a Montana client" and substituted "shall present proof of licensure from the state where the person is licensed" for "is exempt from this requirement"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 inserted (3) providing that a person qualifying for a practice privilege is exempt from the permit and display requirements. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1997 Amendment: Chapter 492 in (1), in first sentence, and in (2), after "current", deleted "annual"; and in second sentence of (1), at beginning, substituted "A permit" for "An annual permit". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted (2) through (5) that read: "(2) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal of a permit by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(3) The board may in its discretion waive the requirement stated in subsection (2) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(4) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.

(5) Subject to subsections (3) and (4), the board may revoke, suspend, or refuse to renew the permit of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: In (1) substituted language, providing that a public accountant must have a current permit which must be issued by the Department to an applicant who holds a certificate as a certified public accountant and complies with chapter requirements, for former text that read: "Annual certificates and licenses to engage in the practice of public accounting in this state shall be issued by the department to certified public accountants and to licensed public accountants. There is an annual certificate or license renewal fee in an amount to be determined by the board. Annual certificates and licenses expire on December 31 of each year and may be renewed for a period of 1 year by certified public accountants and licensed public accountants in good standing on payment of the annual renewal fee."; deleted former (2), which read: "A person who fails to renew his license or certificate shall promptly surrender it to the board upon request."; in (2) inserted "of a permit" after "renewal"; in (5) substituted "permit" for "certificate or license"; inserted (6) requiring current annual permit to be displayed.

Statement of Intent: The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "Section 13 allows the Board to prescribe a reasonable annual renewal fee. It is intended that the fee not exceed an amount necessary to meet administrative costs."

Administrative Rules

ARM 24.201.410 Fee schedule.

Title 24, chapter 201, subchapter 21, ARM Renewal and continuing education.

37-50-316. Other license fees prohibited.

Compiler's Comments

2015 Amendment: Chapter 169 at beginning substituted "License fees may not" for "No certificate, permit, or license fees shall" and substituted "accounting" for "accountancy". Amendment effective October 1, 2015.

1983 Amendment: Inserted "certificate, permit, or" before "license fees".

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-50-318. Existing license or certificate transition.

Compiler's Comments

Effective Date: Section 26(2), Ch. 169, L. 2015, provided that this section is effective July 1, 2015.

37-50-325. Practice privilege for nonresident certified public accountant — rules.

Compiler's Comments

2017 Amendment: Chapter 162 in (2)(c) near end of first sentence after "person is" substituted "required to register" for "registered" and in (4) near end after "a firm" substituted "in compliance with" for "registered under". Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in (1)(a) near end and in (2)(a) near middle substituted "is presumed to have qualifications" for "has qualifications" and substituted "license of this state without the need to obtain a license under 37-50-302" for "certificate and a permit of this state without the need to obtain a certificate under 37-50-302 or a permit under 37-50-314"; and in (2)(c) after "required" inserted "unless the person is registered pursuant to 37-50-335". Amendment effective October 1, 2015.

Effective Date: This section is effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

Administrative Rules

ARM 24.201.531 Practice privilege.
ARM 24.201.532 Application review.
ARM 24.201.535 Reactivation of inactive status.
ARM 24.201.537 Retired status.

37-50-330. Compliance with ownership requirements — firm registration.

Compiler's Comments

2017 Amendment: Chapter 162 in (1)(c) inserted "of good moral character and". Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in (1) substituted "that is engaged" for "or a firm composed of public accountants that is or plans to become engaged" and after "not licensed" deleted "as public accountants or certified"; in (1)(a), (2), and (3) near beginning after "licensed" deleted "or certified"; in (1)(a) substituted "practices under the practice privilege" for "must be registered"; in (1)(b) after "licensed" deleted "or certified accountants" and substituted "37-50-325" for "37-50-325(2)"; deleted former (1)(d) that read: "(d) any person with an ownership interest in the firm who is not licensed or certified as an accountant and who holds a professional license, registration, or certification issued by this state or another jurisdiction is in compliance with the requirements for that license, registration, or certification"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 throughout section substituted reference to firm for reference to corporation or partnership; in (1)(a) near middle after "state" inserted "or, in the case of a firm that must be registered pursuant to 37-50-335, a licensee of another state who meets the requirements set out in 37-50-325(1) or (2)"; in (1)(b) near end after "another" inserted "substantially equivalent" and after "jurisdiction" inserted "or meet the requirements of 37-50-325(2)"; in (1)(c) at end substituted "firm or its affiliated entities" for "partnership or corporation"; in (2) near beginning after "state" inserted "or a person qualifying for practice privileges under 37-50-325" and at end after "interest in a" substituted "firm, who is responsible for supervising attest or compilation services, and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm is responsible for all attest or compilation services" for "partnership or corporation organized pursuant to this section is ultimately responsible for all services provided by the partnership or corporation including any unit, branch, or division of the partnership or corporation providing attestation services"; inserted (3) regarding competency requirements of a person who signs or authorizes someone to sign the accountant's report; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: This section is effective October 1, 2001.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

37-50-335. Registration of firms — exemptions.

Compiler's Comments

2017 Amendment: Chapter 162 deleted former (2) that read: "(2) All firms that do not have an office in this state but perform attest services and compilations for a client having its home office in this state shall register annually with the department"; inserted (3) concerning state satellite offices; substituted (4) concerning firms that do not have offices in this state for former language that read: "(4) A firm that is not subject to the requirements of subsection (2) may perform other professional services while using the title "CPA" or "CPA firm" in this state without registering with the department only if:

(a) it performs the services through a person with practice privileges under 37-50-325; and

(b) it can lawfully perform the services in the state where persons with practice privileges have their principal place of business"; deleted former (5) that read: "(5) Each firm that establishes or maintains satellite offices in this state for the practice of public accounting shall provide a list of the location of each satellite office in this state at the time of annual registration"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in (1) substituted current language regarding annual registration for former (1) that read: "(1) The following firms shall register annually with the department:

(a) those with an office in this state performing attest services and compilations;

(b) those with an office in this state that use the title "CPA" or "CPA firm""; deleted former (2) that read: "(2) A firm that undergoes a board-sanctioned compliance or peer review process and receives an acceptable, a pass, or a pass with deficiencies rating for these services and completes all remediation in its principal place of business is exempt from registration"; in (2) substituted "All firms" for "those" and inserted "shall register annually with the department"; in (3) after "may" deleted "not" and substituted "of firms" for "required in subsection (1)(c)"; in (5) substituted "firm that establishes or maintains satellite offices" for "office established or maintained" and substituted "shall provide a list of the location of each satellite office in this state at the time of annual registration" for "in this state by a certified public accountant, by a firm of certified public accountants, by a licensed public accountant, by a firm of licensed public accountants, or by a foreign accountant recognized under 37-50-313 shall register annually with the department. A fee may not be charged for this registration"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 inserted (1) through (3) regarding registration of firms and exemptions from registration under certain circumstances; in (4) in first sentence in two places substituted "firm" for "partnership or corporation" and deleted former third sentence that read: "In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendment: Chapter 375 in first sentence before "under 37-50-313" substituted "by a foreign accountant recognized" for "by one registered"; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1983 Amendment: At end substituted language requiring an annual permit under 37-50-314 for "accounting must be certified or licensed annually under 37-50-314".

37-50-341. Initiation of proceedings — hearings and rulemaking.

Compiler's Comments

2015 Amendment: Chapter 169 in (2) and (3) after "licensed" deleted "or certified". Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 in (1) near middle after "motion" inserted "upon a complaint made by the board of accountancy of another state"; inserted (2) and (3) regarding disciplinary actions; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

Part 4
Miscellaneous Provisions

Part Case Notes

Statute of Limitations Barring Professional Negligence Claim Against Accountant Who Entered Business With Client: Brevig's company executed a cattle share agreement with Brevig's accountant wherein the accountant purchased cattle and bulls, paid taxes on the livestock, and agreed to supply labor for the operation of the herd. In turn, the company agreed to manage the herd, cover certain expenses, market the stock, and maintain herd records. The partnership split calves born to the herd, 60% to the company and 40% to the accountant. The arrangement was profitable for both parties and produced appropriate returns on the accountant's investment.

Brevig later argued that it was unethical for the accountant to go into business with the partnership because the partnership was one of the accountant's clients. The 3-year statute of limitations in 27-2-204 barred Brevig's negligence claim with respect to the cattle share agreement because the claim of professional negligence was not filed within 3 years from the time that the agreement was executed. McCormick v. Brevig, 1999 MT 86, 294 M 144, 980 P2d 603, 56 St. Rep. 355 (1999).

37-50-402. Privileged communications — exceptions.

Compiler's Comments

2015 Amendment: Chapter 169 in (1) after "engaging a certified" deleted "or licensed", after second "certified public accountant" deleted "licensed public accountant", after "divulge information that the" substituted "certified public accountant" for "certified or licensed accountant", and after "professional services as a" inserted "certified"; and in (2) inserted "certified". Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 in (1) in first sentence in two places after "firm" deleted "or corporation"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1993 Amendment: Chapter 82 at end of (2) inserted "or in the process of any board-approved practice review program"; and made minor changes in style.

1983 Amendment: In last sentence inserted "or documents" after "testimony"; substituted "furnished" for "given"; and inserted "or a board proceeding" at end of section.

37-50-403. Nonliability — evidential privilege — application to nonprofit corporations.

Compiler's Comments

2015 Amendment: Chapter 169 in (1) substituted "as certified public accountants" for "the accounting profession". Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 51
REAL ESTATE BROKERS AND SALESPERSONS

Chapter Compiler's Comments

Severability Clause: Section 23, Ch. 250, L. 1963, was a severability clause.

Chapter Administrative Rules

Title 24, chapter 210, ARM Board of Realty Regulation.

Chapter Case Notes

Failure to Disclose City Zoning Ordinance, Water and Mold Damage Alleged — Negligence, Constructive Fraud, and Consumer Protection Act Violations Alleged — Duty of Care for Real Estate Professionals. Young v. ERA Advantage Realty, 2022 MT 138, 409 Mont. 234, 513 P.3d 505.

Counterclaim for Payment of Commission Remanded Along With Claims for Fraud, Negligent Misrepresentation, Breach of Contract, and Breach of Covenant of Good Faith: May brought an action against a Bozeman real estate company and a real estate broker, alleging fraud, breach of contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, negligent and intentional infliction of emotional distress, negligent misrepresentation, and professional negligence. The defendants counterclaimed for payment of their commission, and the District Court granted summary judgment for the defendants and against May on all issues. The Supreme Court reversed the District Court on several of May's claims and remanded them to the District Court. The Supreme Court also held that the defendants' counterclaim for their commission, although not briefed by the parties, was so inextricably connected to the facts of those of May's claims remanded to the District Court that the counterclaim should also be remanded to the District Court for determination along with May's remaining claims. May v. ERA Landmark Real Estate of Bozeman, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000).

Professional Negligence — Expert Testimony Required to Establish Standard of Care — Statutory Standard Inapplicable: May sued a Bozeman real estate company and real estate agent over the sale of his service station and alleged professional negligence on the part of the agent as one of his claims for relief. The Supreme Court affirmed the District Court's holding that the defendants were entitled to summary judgment because May had not listed an expert witness to give expert testimony to establish the standard of care for the agent. The Supreme Court distinguished Durbin v. Ross, 276 M 463, 916 P2d 758 (1996), and relied upon Newville v. St., 267 M 237, 883 P2d 793 (1994), reasoning that real estate sales is among the professions requiring special knowledge and that a lay jury could not pass judgment on the question of whether an individual correctly used that knowledge without the assistance of expert testimony. The Supreme Court also held that inasmuch as 37-51-313 had not been enacted until after the instant case arose, the statute could not be relied on to provide express duties of the agent. May v. ERA Landmark Real Estate of Bozeman, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000). However, see Wagner v. MSE Technology Applications, Inc., 2016 MT 215, 384 Mont. 436, 383 P.3d 727, in which the Supreme Court ruled that expert testimony may not be necessary for a claim of professional negligence because those duties are now outlined in statute.

Real Estate Sale — Alleged Breach of Fiduciary Duties Held Repetitious of Other Claims: May brought an action against a Bozeman real estate company and agent, claiming that defendants breached their fiduciary duty to him and also alleging fraud, professional negligence, negligent misrepresentation, and bad faith. The Supreme Court held that the District Court properly dismissed the claim for breach of fiduciary duties, which May alleged on the basis of Durbin v. Ross, 276 M 463, 916 P2d 758 (1996), because that claim was based upon the same facts as the other claims, was therefore repetitious of those other claims, and added nothing to May's claims for relief. May v. ERA Landmark Real Estate of Bozeman, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000).

Real Estate Sale — Disclosure Statement Not Susceptible to Violation — Standard Listing Agreement Violation: In an action against a realtor for breach of contract, May alleged violation of both a document entitled "Disclosure Regarding Types of Real Estate Agency Relationships Available" (disclosure statement), listing the duties of a real estate agent, and a "Standard Listing Contract". The Supreme Court held that the disclosure statement was not a contract and could not serve as the basis for a breach of contract action. The Supreme Court also held that the Standard Listing Contract could be violated and that May had sufficiently alleged breach of a specific provision of that contract, that provision being one that the broker was employed to find a buyer ready and willing to acquire the property on the terms stated in the contract, to survive a motion for summary judgment. May v. ERA Landmark Real Estate of Bozeman, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000).

Qualifications of Real Estate Experts — Differing Valuation: At a hearing concerning the valuation and division of property in the dissolution of Maureen and Joseph's marriage, an agricultural real estate broker testified for Maureen that the parties' ranch was worth $398,000 to $400,000, while a certified and licensed property appraiser testified for Joseph that the ranch was worth $182,500. Joseph contended that the District Court erred in accepting the value of the ranch as testified to by the real estate broker because the broker had no experience as a real property appraiser. Citing Jim's Excavating Serv., Inc. v. HKM Associates, 265 M 494, 878 P2d 248 (1994), the Supreme Court held that whether an adequate foundation has been established for the admission of expert testimony is an issue largely within the discretion of the District Court and that the District Court did not abuse its discretion when it relied upon the testimony of the real estate broker. The Supreme Court therefore affirmed the part of the District Court's order that valued the parties' ranch at $400,000. In re Marriage of Ortiz, 282 M 500, 938 P2d 1308, 54 St. Rep. 446 (1997).

Sale Not Occurring — Broker Entitled to Commission Based on Terms of Contract: Language in a listing agreement was clear and unambiguous in stating that a broker was entitled to a commission upon procuring a buyer who was "ready and willing to purchase" and who entered into a written agreement to make the purchase. The District Court did not err in granting summary judgment in favor of the broker when the seller was obligated to pay the commission even though the proposed sale did not go through. Sayegusa v. Rogers, 256 M 269, 846 P2d 1005, 50 St. Rep. 89 (1993), followed in Johnson v. Nyhart, 269 M 379, 889 P2d 1170, 52 St. Rep. 37 (1995).

Variation From Terms of Listing Contract — No Entitlement to Commission: When differences in the sale offers produced by a real estate broker varied substantially from the terms of the listing contract, the broker was not entitled to a commission on the sale of the property. Watson v. Fultz, 239 M 364, 782 P2d 361, 46 St. Rep. 1751 (1989).

Commission Reduction Agreement Not Breach of Fiduciary Duty: Cady listed his ranch for sale with Ussin, a realtor. Ussin found a buyer in Ehly. Ussin advised Ehly that Cady would not accept Ehly's offer but that Ussin would reduce his commission to make a sale. The agreement entered was that Ussin would reduce his commission by the amount between what Cady wanted and what Ehly wanted to pay. This was not communicated to Cady. A buy-sell was entered, and Cady later breached. He refused to pay Ussin his commission. The District Court awarded Ussin his commission. On appeal, the Supreme Court held that the fiduciary duty of a realtor to the seller is breached if: (1) a seller is foiled or deceived by the contract or does not understand the contract; or (2) full disclosure of all pertinent facts is not made by the broker. The court held that although arguably Ussin had breached his duty to Cady by not disclosing all pertinent facts, there was no damage to Cady. The flow of money to Cady was the same regardless of the commission reduction agreement. Cady suffered no prejudice or damage from the agreement. Ussin was entitled to his commission. Ehly v. Cady, 212 M 82, 687 P2d 687, 41 St. Rep. 1611 (1984).

Duty of Broker to Disclose: The fiduciary relationship which exists between a broker and his client imposed upon plaintiff a duty to verbally disclose a number of facts which were not disclosed verbally, although contained in the listing agreement. These included the fact that defendants could not withdraw plaintiff's authority under the agreement without forfeiting a sizable commission, and could not sell the property on their own during the term of the agreement. The District Court erred in finding there was no fraud involved in the execution of the employment contract. Lyle v. Moore, 183 M 274, 599 P2d 336, 36 St. Rep. 1307 (1979), followed in Watson v. Fultz, 239 M 364, 782 P2d 361, 46 St. Rep. 1751 (1989).

Scope of Act — Honest Mistake: The Real Estate License Act of 1963 (Ch. 250, L. 1963) should be construed to lend maximum efficacy to the enforcement of the fiduciary relationships involved in the real estate profession. However, willful misconduct must be present as opposed to an "honest" mistake, regardless of the argument that another course of conduct or the lack of some negligence would have avoided the situation complained of. Van Ettinger v. Pappin, 180 M 1, 588 P2d 988, 35 St. Rep. 1956 (1978), partially overruled in Cechovic v. Hardin & Associates, Inc., 273 M 104, 902 P2d 520, 52 St. Rep. 854 (1995).

Part 1
General

37-51-102. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 6, Ch. 375, L. 2023, in definition of adverse material fact in (a) substituted "being significant enough to affect" for "being of enough significance as to affect" and in (a)(i) substituted "affects the structural integrity" for "affects structural integrity". Amendment effective October 1, 2023.

Section 11, Ch. 482, L. 2023, deleted definition of property manager (see sec. 11, Ch. 482, L. 2023, for former text); and made minor changes in style. Amendment effective October 1, 2023.

2019 Amendment: Chapter 354 deleted definition of account; and made minor changes in style. Amendment effective February 1, 2021.

2015 Amendment: Chapter 211 inserted definition of asset management; in definition of broker in (d) at end deleted "and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease", inserted (g) related to asset management services, and in (h) substituted "this subsection (5)" for "subsections (4)(a) through (4)(f)"; in definition of negotiations substituted "includes" for "means"; substituted current definition of property manager for former definition that read: ""Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602"; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

2007 Amendment: Chapter 502 inserted definitions of supervising broker and supervising broker endorsement. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2001 Amendments — Composite Section: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

Chapter 492 deleted former definition of broker associate that read: ""Broker associate" means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm"; deleted former definition of broker owner that read: ""Broker owner" means a broker who owns or has a financial interest in a real estate firm"; in definition of in-house buyer agent designate and in-house seller agent designate near beginning after "broker" deleted "associate" and in two places after "broker" deleted "owner"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 565 inserted definitions of adverse material fact, buyer, buyer agent, buyer broker agreement, buyer subagent, dual agent, in-house buyer agent designate, in-house seller agent designate, listing agreement, negotiations, real estate transaction, seller, seller agent, seller subagent, and statutory broker; in definition of broker associate, after "associates", inserted "as an employee or independent contractor"; substituted salesperson for salesman as defined term; and made minor changes in style.

1993 Amendment: Chapter 142 inserted definition of property manager; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (3)(f) to include in definition of broker one who, for a fee, commission, or other compensation, refers a person to another to buy or sell real estate; and in (3)(g) changed subsection reference.

1989 Amendment: Throughout (3) made minor changes in grammar, phraseology, and style; in (3)(a), before first occurrence of "valuable consideration", deleted "a fee, commission, or other"; in (3)(b) substituted "disposition of real estate for consideration" for "disposition thereof at a salary or a fee, commission, or any other consideration"; in (3)(d), at beginning, inserted "makes the advertising, sale, lease, or other real estate information available by public display to potential buyers"; and inserted (3)(e) relating to locating or obtaining real estate.

1985 Amendment: Inserted (1) defining account.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (5); changed internal references to the department and the board.

Administrative Rules

ARM 24.210.301 Definitions.

Case Notes

Failure to Disclose City Zoning Ordinance, Water and Mold Damage Alleged — Negligence, Constructive Fraud, and Consumer Protection Act Violations Alleged — Duty of Care for Real Estate Professionals. Young v. ERA Advantage Realty, 2022 MT 138, 409 Mont. 234, 513 P.3d 505.

Inability to Obtain Real Estate Financing — Return of Earnest Money Proper: Defendants secured prequalification on a real estate loan and, pursuant to the buy-sell agreement, paid $53,000 in earnest money to purchase a condominium from plaintiff. The buy-sell agreement required the defendants to obtain financing for the remaining $946,000 of the purchase price. However, the economic climate later changed and required the need for a larger down payment, which defendants did not have. Defendants notified plaintiff and requested the return of the earnest money, but plaintiff refused and filed a fraud action, contending that defendants falsely represented their borrowing status and failed to obtain the required financing. The District Court summarily dismissed the fraud claims because the purchase agreement provided that if conventional financing could not be obtained, the agreement was void. On appeal, plaintiff asserted that a genuine issue of material fact remained regarding the fraud claims, precluding summary judgment. The Supreme Court disagreed. It was undisputed that defendants applied for loans and were prequalified for financing, so defendants did not misrepresent their borrowing status. Summary dismissal of the fraud claims was appropriate as a matter of law, particularly because plaintiff had the opportunity to be heard on the issue. The District Court properly terminated the purchase agreement when defendants could not obtain financing, and plaintiff was correctly ordered to return the earnest money. Mill Creek Ltd. Partnership v. Lodge, 2010 MT 65, 355 Mont. 478, 228 P.3d 1144.

Agreement for Commission for Sale of Real Estate Not in Writing — Summary Judgment Denying Commission Affirmed: Andersen assisted in the sale of Schenk's ranch, and although Schenk allegedly told Andersen that Andersen would receive a commission on the sale, no listing agreement was ever reduced to writing. The District Court granted summary judgment for Schenk on the commission issue because 28-2-903 provides that a real estate agreement authorizing an agent to transact for a commission is invalid if it is not in writing. Even though Schenk allegedly told Andersen that a commission would be earned if the ranch sold for at least $10 million, the sale price was $6.5 million, so Andersen could not hold Schenk to an agreement that Schenk never made. Absent a genuine issue of material fact, summary judgment for Schenk was affirmed. Andersen v. Schenk, 2009 MT 399, 353 M 424, 220 P3d 675 (2009).

Simultaneous Representation of More Than One Buyer by Same Buyer Agent — Conflict of Interest: Because a buyer agent must act solely in the best interests of the buyer, a conflict of interest and breach of obligation arises when a buyer agent simultaneously represents more than one buyer competing for the same property. Zuazua v. Tibbles, 2006 MT 342, 335 M 181, 150 P3d 361 (2006).

Officers of National Realty Corporation Not Brokers — Distinction Between "Fee" and "Commission": The officers of a national corporation that provides licensed brokers with catalogs, confidential listings, and referrals for a commission received only after a sale are not acting as "brokers". The forbidden act is the collection of a fee for advertisement of real estate for sale, and there is a distinction between a fee and a commission collected only after an actual sale. Bradt v. Strout Realty, Inc., 478 F. Supp. 1259, 36 St. Rep. 1989 (D.C. Mont. 1979).

Questions of Law: Whether plaintiff was doing business in Montana within purview of statute governing foreign corporations or was carrying on business of a real estate broker were questions of law under 26-1-201. Union Interchange, Inc. v. Parker, 138 M 348, 357 P2d 339 (1960).

Attorney General's Opinions

License Not Required for Advertising Real Estate Information: The mere advertisement of a seller's property for a fee charged to the seller does not constitute an act regulated by real estate licensing law. Therefore, a person is not required to be licensed as a real estate broker or salesperson in order to obtain and organize information from potential sellers of real estate and to advertise the information to interested potential buyers for a fee charged to the seller only. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

Licensing Regulations Not Applicable to Finder's Fee: A person is not required to be licensed as a real estate broker or salesperson in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate. Further, a broker's license should not be revoked or suspended for paying a finder's fee when the payee does not perform any negotiation or other services regulated by real estate licensing law. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

"Broker" and "Salesman" (now "Salesperson") — Scope of Definitions: The definitions of "broker" and "salesman" (now "salesperson") include individuals engaged in the business of renting or leasing real property, transacting interests in condominiums, providing lists of real property rentals, or arranging fee ownership time-sharing of real property. 40 A.G. Op. 54 (1984).

Computer Referral Service: Corporations operating a computer referral service for the purpose of promoting the sale, lease, or disposition of real estate within the state must comply with the licensing requirements of Title 37, ch. 51, part 3, in order to conduct operations in Montana. 34 A.G. Op. 23 (1971).

37-51-103. Exemptions.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 250, L. 2023, inserted (2)(c) concerning exception to provisions of chapter regarding digital media platforms; and made minor changes in style. Amendment effective April 25, 2023.

Section 12, Ch. 482, L. 2023, in (1) in introductory clause at end of first sentence deleted "or a property manager"; deleted former (1)(h) that read: "(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States"; inserted (1)(i) concerning property managers; and made minor changes in style. Amendment effective October1, 2023.

2015 Amendment: Chapter 211 in (1) at end of first sentence inserted "or a property manager" and in second sentence before "provisions" inserted "licensing"; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

1997 Amendment: Chapter 251 in (1), near middle of introductory clause after "section", substituted "must identify" for "shall constitute"; in (1)(b), near beginning before "special", deleted "duly executed"; inserted (1)(i) exempting a person who performs acts with respect to certain right-of-way transfers, condemnations, or governmental or tribal permits from licensure requirements; and made minor changes in style.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

1989 Amendments: Chapter 180, in (1)(b), after "executed", inserted "special or general", after "authorizing the" deleted "final consummation of any contract for the", and after "real estate" inserted language clarifying that attorney-in-fact exemption from licensing requirement does not apply to a person who regularly, consistently, or for commission or consideration participates in a real estate transaction for another in conjunction with business or to avoid licensing requirements.

Chapter 314 near beginning of (1), before "compensation", deleted "a commission or"; inserted (2) excepting general circulation print and broadcast media; and made minor changes in grammar and style.

Preamble: The preamble to Ch. 180, L. 1989, provided: "WHEREAS, the Legislature of the State of Montana finds that there presently is an attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesman [now salesperson]; and

WHEREAS, the Legislature of the State of Montana finds that there is a potential use of the attorney-in-fact exemption by certain persons on a regular or consistent basis, thereby allowing those persons to avoid license requirements and negating adequate safeguards to the public; and

WHEREAS, the Legislature of the State of Montana finds the present attorney-in-fact exemption is limited to one based on a special power of attorney; and

WHEREAS, the Legislature of the State of Montana finds that the attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesman [now salesperson] should be expanded to include a general power of attorney.

THEREFORE, the Legislature of the State of Montana finds it appropriate to expand the attorney-in-fact exemption to include one based on a general power of attorney and to limit all attorney-in-fact exemptions to occasional use under circumstances in which it is reasonably certain that adequate safeguards to the public are maintained."

Case Notes

Agent Seller — Bond Coverage: Members of the public have the right to rely upon express or implied representations of a licensed real estate agent or broker, although the agent is in fact the owner of the property being sold. Therefore, the surety is bound by such express or implied representations, and the bond must cover such judgments entered. Twite v. W. Sur. Co., 176 M 286, 577 P2d 1219 (1978).

Advertising Not Dealing: Advertising for purpose of bringing buyers and sellers together is not dealing in real estate for license purposes. Union Interchange, Inc. v. Parker, 138 M 348, 357 P2d 339 (1960).

Isolated Transactions: Under former provision (sec. 3, Ch. 195, L. 1921, repealed by Ch. 250, L. 1963) defining real estate broker and setting forth classes exempted from Ch. 195, L. 1921, provision similar to present 37-51-401 had no application to one who acted as a broker in connection with a single transaction only. Harbolt v. Hensen, 78 M 228, 253 P 257 (1927).

Attorney General's Opinions

License Not Required for Advertising Real Estate Information: The mere advertisement of a seller's property for a fee charged to the seller does not constitute an act regulated by real estate licensing law. Therefore, a person is not required to be licensed as a real estate broker or salesperson in order to obtain and organize information from potential sellers of real estate and to advertise the information to interested potential buyers for a fee charged to the seller only. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

37-51-105. Sexual or violent offender registration information — responsibility of broker or salesperson.

Compiler's Comments

Effective Date: Section 3, Ch. 99, L. 1999, provided that this section is effective on passage and approval. Approved March 17, 1999.

Part 2

Board of Realty Regulation

Part Administrative Rules

Title 24, chapter 210, subchapter 1, ARM Organizational rule.
Title 24, chapter 210, subchapter 2, ARM Procedural rules.
Title 24, chapter 210, subchapter 8, ARM Property management regulation.

37-51-201. Presiding officer — seal — records — prohibition on membership in real estate associations.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 24.210.411 Board meetings.

ARM 24.210.412 Record of minutes and hearings.

37-51-202. General licensing power.

Administrative Rules

ARM 24.210.301 Definitions.

Title 24, chapter 210, subchapter 6, ARM Brokers and salespersons.

ARM 24.210.604 Supervising broker endorsement.

Case Notes

No Board Requirement to Rule With Particularity on Objections and Exceptions: Proposed findings of fact and conclusions of law as prepared by a hearing examiner detailed the factual basis for his conclusion that the Board of Realty Regulation had power to suspend or revoke Sorini's broker's license. Prior to her appearance before the full Board, Sorini submitted her contentions of claimed error in the findings and conclusions. The Board considered these contentions and voted unanimously to adopt the findings and conclusions of the hearing examiner. On appeal, the Supreme Court held that Sorini was entitled to nothing further and that the Board was not required to specifically state in writing that her exceptions to the proposed findings were insufficient. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Penalty Not Unusual or Unwarranted: Sorini argued that the revocation of her broker's license was based on a finding by a hearing examiner that the mortgage on her client's home was foreclosed due to her actions. The violations with which she was charged did not include causing the foreclosure, and she maintained that she was punished to an unusual and unwarranted degree for the violations with which she was charged. The Supreme Court noted that the Board of Realty Regulation found that Sorini had violated three statutory prohibitions under 37-51-321, any one of which would result in revocation or suspension at the Board's discretion. There were enough facts before the Board to allow revocation without considering whether Sorini caused the foreclosure. The court held that the penalty was not unusual or unwarranted. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Revocation of Real Estate Broker's License — No Denial of Rights at Administrative Hearing — Hearing Examiner and Board Attorney as Deputy Attorneys General: A hearing examiner recommended that Sorini's real estate broker's license be revoked for violations of 37-51-321. On appeal, Sorini argued that she was denied her rights at the administrative hearing because both the hearing examiner and the attorney for the Board of Realty Regulation were deputies in the Attorney General's office; however, she failed to submit any proof to support this allegation. The Supreme Court noted that 2-4-611 establishes the manner in which a party may file an affidavit for disqualification of a hearing examiner, holding that in the absence of an affidavit it was not proper to raise the issue on appeal. The court agreed that having a greater separation of prosecutorial and decisionmaking functions would eliminate an appearance of impropriety, but found nothing to warrant a reversal of the District Court. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

37-51-203. Rulemaking power.

Compiler's Comments

Transition: Section 10, Ch. 497, L. 1979, provided: "All orders and rules relating to regulation of the real estate industry made by the board of real estate remain in full force and effect until revoked or modified in accordance with law by the board of realty regulation. The records and documents of the board of real estate are transferred to the board of realty regulation. Licenses, permits, and certificates issued prior to the effective date of this act remain valid under the same terms and conditions as when issued and are subject to the provisions of Title 37, chapter 51."

Administrative Rules

Title 24, chapter 210, ARM Board of Realty Regulation.

37-51-204. Educational programs.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 482, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 27 in (2) inserted references to 37-51-303 and 37-51-603; and made minor changes in style. Amendment effective February 17, 2017.

2015 Amendment: Chapter 80 in (4) at end substituted "37-1-306" for "37-1-131". Amendment effective July 1, 2015.

Saving Clause: Section 12, Ch. 80, L. 2015, was a saving clause.

Severability: Section 13, Ch. 80, L. 2015, was a severability clause.

2011 Amendment: Chapter 100 inserted (4) regarding use of certain education information to determine compliance with board requirements. Amendment effective October 1, 2011.

2005 Amendment: Chapter 467 in (3) near middle after "required" substituted "by the board" for "under 37-51-310". Amendment effective July 1, 2005.

2003 Amendment: Chapter 375 in (2) in exception clause inserted reference to subsection (3); and inserted (3) allowing board to require specific performance levels of licensees who take certain kinds of continuing education courses. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1995 Amendment: Chapter 429 substituted language in (2) prohibiting license examinations except as provided in 37-51-302 for language that read: "The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees"; and deleted (3) that read: "(3) The board may prescribe by rule continuing education requirements for all licensees, not to exceed 15 classroom or equivalent hours in any 2-year period, including proof of conformance, but except as provided in 37-51-302 the board may not require examination of licensees."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: Inserted (3) allowing Board to establish continuing education requirements.

Administrative Rules

ARM 24.210.604 Supervising broker endorsement.

ARM 24.210.660 Prelicensing education — salespersons and brokers.

37-51-205. Compensation of members — expenses.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board shall receive as compensation for each day actually spent on his official duties the sum of $25 and travel expenses, as provided for in 2-18-501 through 2-18-503, connected with the performance of duties for the board".

37-51-207. Schedule of fees.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 24.210.401 Fee schedule.

ARM 24.210.801 Property management — fee schedule.

37-51-208. Deposit of money not otherwise provided for.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-51-209. Executive secretary — hiring and duties.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 483 near beginning after "department" deleted "of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 492 deleted former (2) that read: "(2) The person hired to be executive secretary:

(a) shall possess at least a bachelor's degree from an accredited college or university;

(b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;

(c) must be a citizen of the United States of America; and

(d) must be of good moral character"; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 3, Ch. 270, L. 1991, provided: "[This act] is effective July 1, 1991."

Part 3
Licensing

Part Case Notes

Intentional Violation Not Required to Recover Under Real Estate License Laws: Saville, the seller, and her realtor were sued by the purchasers of her property. The suit was based on negligent misrepresentation of the boundaries of the property by the realtor. Saville cross-claimed for indemnification against the realtor for any judgment obtained against her by the plaintiffs and was awarded indemnification by the jury. Hardin, the realtor, appealed, arguing that Saville was not an aggrieved person as contemplated by this chapter. The Supreme Court held that Saville did not have to show that the misrepresentation made by the realtor was a malicious or intentional violation of the chapter in order to be an aggrieved person under the chapter. Cechovic v. Hardin & Associates, Inc., 273 M 104, 902 P2d 520, 52 St. Rep. 854 (1995), partially overruling Van Ettinger v. Pappin, 180 M 1, 588 P2d 988 (1978).

Board of Realty Regulation Not Empowered to Award Damages — Complaint to Board Inadequate Notice of Legal Claim: The Board of Realty Regulation may only revoke or suspend a broker's license and has no power to award damages for negligence or fraud. Further, because the Board is not designated by law as a quasi-judicial board pursuant to 2-15-124, a complaint to the Board does not give adequate notice of the existence of a legal claim. Erickson v. Croft, 233 M 146, 760 P2d 706, 45 St. Rep. 1379 (1988).

Statute of Limitations Begins at Time of Injury: Plaintiff alleged defendant violated 37-51-323 by misrepresenting himself as being a real estate broker licensed by another state. Plaintiff's complaint was filed over 2 years after the alleged tort. Plaintiff contends that defendant's alleged misrepresentation constitutes concealment of a material fact, and therefore the statute of limitations should be tolled. The court held that defendant's misrepresentation was not an affirmative act calculated to obscure plaintiff's cause of action. In nonmalpractice tort actions, the statute of limitations begins to run on the date of plaintiff's injury. This action is barred because plaintiff did not file within the 2-year period. Payne v. Stratman, 229 M 377, 747 P2d 210, 44 St. Rep. 2059 (1987).

Penalty Not Unusual or Unwarranted: Sorini argued that the revocation of her broker's license was based on a finding by a hearing examiner that the mortgage on her client's home was foreclosed due to her actions. The violations with which she was charged did not include causing the foreclosure, and she maintained that she was punished to an unusual and unwarranted degree for the violations with which she was charged. The Supreme Court noted that the Board of Realty Regulation found that Sorini had violated three statutory prohibitions under 37-51-321, any one of which would result in revocation or suspension at the Board's discretion. There were enough facts before the Board to allow revocation without considering whether Sorini caused the foreclosure. The court held that the penalty was not unusual or unwarranted. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Treble Damages Not Awarded — No Harm Caused by Realtor's Actions: No penalty was awarded under 37-51-323 when an audit of a realtor's trust account indicated that even though disbursement from the client's trust account was not approved in advance by the client, the disbursements were proper and the client suffered no damages. United Farm Agency v. Blome, 198 M 435, 646 P2d 1205, 40 St. Rep. 19 (1982).

Aggrieved Persons — Persons Sustaining Damages — Waiver of Damages: Appellants do not qualify as aggrieved persons or persons sustaining damages for an alleged violation of 37-51-321(9) when suing a broker over an alleged defect in an easement purportedly conveyed to the appellants because appellants failed to first establish the nonexistence of the easement in question. Secondly, and more importantly, appellants waived any claim for damages by closing the transaction after they became aware of the alleged defect in the easement. Van Ettinger v. Pappin, 180 M 1, 588 P2d 988, 35 St. Rep. 1956 (1978).

Scope of Act — Honest Mistake: The Real Estate License Act of 1963 (Ch. 250, L. 1963) should be construed to lend maximum efficacy to the enforcement of the fiduciary relationships involved in the real estate profession. However, willful misconduct must be present as opposed to an "honest" mistake, regardless of the argument that another course of conduct or the lack of some negligence would have avoided the situation complained of. Van Ettinger v. Pappin, 180 M 1, 588 P2d 988, 35 St. Rep. 1956 (1978), partially overruled in Cechovic v. Hardin & Associates, Inc., 273 M 104, 902 P2d 520, 52 St. Rep. 854 (1995).

Misrepresentation Action in Real Estate Sale: The court properly awarded summary judgment to defendants in a misrepresentation action under the Montana Real Estate License Act of 1963 (Ch. 250, L. 1963) when the record indicated that no fraudulent representations were made by defendants and the Statute of Limitations had expired, notwithstanding the "discovery" exception. Anderson v. Applebury, 173 M 411, 567 P2d 951 (1977).

Proof of Injury: To recover under 37-51-323, plaintiff must show not only that real estate broker violated this act (Ch. 250, L. 1963) but also that plaintiff suffered damage thereby. Evidence that broker received commission is not sufficient proof of damage. Sellers who exchanged their equity in residence for cash sufficient to pay broker's commission and assignment of buyer's interest in an installment promissory note were not entitled to recovery from broker when only two installments were paid on note in absence of evidence that note was valueless. Sellers who made no attempt to contact debtors for payment or to contact buyers for information or assistance were not yet damaged since note might still be fully collectible with interest. Denny v. Brissonneaud, 161 M 468, 506 P2d 77 (1973).

Civil Liability Resulting From Violation: Where vendor sued vendee, broker, and broker's surety for cancellation of contract for sale of land and for damages and where vendee filed cross-complaint against broker and broker's surety, vendor was entitled to cancellation of contract and both vendor and vendee were entitled to reasonable attorney's fees and equal share in treble damage award based on vendee's right to recover his earnest money from broker and broker's surety. Stafford v. Love, 151 M 270, 442 P2d 190 (1968).

Part Attorney General's Opinions

Public Disclosure of Records: The Board of Real Estate (now Board of Realty Regulation), when requested, must disclose the status of any real estate licensee, whether any disciplinary action has been taken against that individual, and, if so, the reason. Public access to information relating to complaints or to allegations and to other files on individual licensees is left to the discretion of the Board, within the guidelines of this opinion. All minutes, except those minutes of a meeting closed by the presiding officer pursuant to 2-3-203, must be open to public inspection. 37 A.G. Op. 107 (1978).

37-51-301. License required — limited to persons.

Compiler's Comments

2015 Amendment: Chapter 211 inserted (4) clarifying "within the state", "broker", and "salesperson". Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

2007 Amendment: Chapter 502 inserted (2) providing that it is unlawful to supervise salespersons without a broker's license and supervising broker endorsement; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

1989 Amendment: Throughout (2) substituted "licensee" for "real estate broker" or "broker"; and made minor changes in phraseology.

1987 Amendment: In (2) deleted reference to subsection (2) of 37-51-102.

Administrative Rules

ARM 24.210.601 General license administration requirements.

Case Notes

No Recovery When Seller Owns Property: The plaintiffs sought to recover for a real estate loss from the state's real estate recovery account. The plaintiffs had been part of a partnership in which the general partner had fraudulently sold some of his own property in a manner that caused the partnership to lose money. The Supreme Court held that when an owner sells his own property, no real estate license is required and therefore under the terms of the statute, no recovery is available from the state's fund. (Decided prior to 1989 amendments.) Yellowstone Valley Properties v. Bd. of Realty Regulation, 243 M 241, 794 P2d 341, 47 St. Rep. 1209 (1990).

Advice to Broker by Nonlicensed Corporate Employee: The act of a nonlicensed employee of a national corporation, whose job was to procure brokers to enter into contracts with the corporation, in accompanying a broker to get a real estate listing and in advising the broker how to set up a "net listing" did not put the corporation out of compliance with this section. The employee was not an "officer" of the corporation in the usual sense, and his actions did not amount to the negotiation of a listing. Bradt v. Strout Realty, Inc., 478 F. Supp. 1259, 36 St. Rep. 1989 (D.C. Mont. 1979).

Licensing of Corporate Officers: It is not required that every officer of a corporation be licensed, only those officers who "perform the functions of a broker". By way of illustration, the president of a Montana corporation who himself did no real estate business of any kind but simply managed the office and general corporate affairs would not need to be licensed. The purpose of Montana law is to require that the buying and selling of real estate be handled by persons who are licensed. Bradt v. Strout Realty, Inc., 478 F. Supp. 1259, 36 St. Rep. 1989 (D.C. Mont. 1979).

Advertising Not Dealing: Advertising for purpose of bringing buyers and sellers together is not dealing in real estate for license purposes. Union Interchange, Inc. v. Parker, 138 M 348, 357 P2d 339 (1960).

Attorney General's Opinions

City Licensing of Real Estate Firms: A city may not require real estate firms to obtain business licenses. 37 A.G. Op. 71 (1977).

Corporate Officers — Sale of Real Estate: A corporation operating computer referral services to real estate brokers may conduct its business in Montana only if all corporate officers involved in the actual operation are licensed as real estate brokers. 34 A.G. Op. 23 (1971).

37-51-302. Broker's or salesperson's license — qualifications of applicant — supervising broker endorsement.

Compiler's Comments

2019 Amendment: Chapter 51 in (4)(a)(iv) in first sentence substituted "between 60 and 80" for "60", after "hours" inserted "as set by the board", and substituted second and third sentences for former text that read: "in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course"; and made minor changes in style. Amendment effective March 7, 2019.

2017 Amendment: Chapter 27 in (5) substituted current text concerning issuance of a license for former text that read: "(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes"; in (6)(c) at end substituted "license" for "pocket card"; and made minor changes in style. Amendment effective February 17, 2017.

2011 Amendment: Chapter 79 in (4)(b) inserted "with a supervising broker endorsement"; deleted former (6)(a)(i) and (6)(a)(ii) that read: "(i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention to obtain the endorsement;

(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed salespersons"; inserted (6)(c) authorizing the board to adopt rules; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 6, Ch. 79, L. 2011, was a saving clause.

2007 Amendment: Chapter 502 inserted (6) providing that an applicant must meet education and experience requirements established by board, that a broker licensed prior to October 1, 2007, is entitled to an endorsement but is subject to endorsement renewal requirements, that continuing education requirements for an endorsement may not be in addition to requirements for a broker, and that the board may not assess a fee for obtaining or renewing an endorsement; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2001 Amendment: Chapter 492 deleted former (6) that read: "(6) A broker's license must indicate whether the broker is a broker owner or a broker associate"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner throughout section substituted "salesperson" or "salesperson's" for "salesman" or "salesman's".

1985 Amendment: Inserted (2)(e) requiring applicant for broker's license to furnish evidence of completion of required course of study; and inserting (4)(a)(iv) requiring applicant for salesman's license to furnish evidence of completion of required course of study.

1981 Amendment: Deleted former subsection (2)(a) requiring U.S. citizenship.

Citizenship Qualifications — Preamble: The preamble to Ch. 341, L. 1981, provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Administrative Rules

Title 24, chapter 210, subchapter 6, ARM Brokers and salespersons.
ARM 24.210.604 Supervising broker endorsement.

Case Notes

Charges of Incompetence and Untrustworthiness Not Determined by Issuance of Broker's License: A complaint was filed against Sorini, a licensed real estate salesperson, for violations of 37-51-321 relating to her competence and trustworthiness. After charges were filed, she was allowed to sit for the real estate broker's examination and was subsequently issued a broker's license. On appeal, she argued that the question of her competence or trustworthiness became moot because the Board of Realty Regulation was required to consider those characteristics before issuing her a broker's license under this section. The Supreme Court noted that while the Board is required by statute to determine that an applicant for a broker's license meets certain standards, in the absence of evidence that the Board considered the pending charges, the determination that she met the standards of conduct was not dispositive of the pending charges against her. The court found no such evidence in the record and concluded that the issue of competence and trustworthiness as raised by the charges was not determined by the issuance of the real estate broker's license. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

No Board Requirement to Rule With Particularity on Objections and Exceptions: Proposed findings of fact and conclusions of law as prepared by a hearing examiner detailed the factual basis for his conclusion that the Board of Realty Regulation had power to suspend or revoke Sorini's broker's license. Prior to her appearance before the full Board, Sorini submitted her contentions of claimed error in the findings and conclusions. The Board considered these contentions and voted unanimously to adopt the findings and conclusions of the hearing examiner. On appeal, the Supreme Court held that Sorini was entitled to nothing further and that the Board was not required to specifically state in writing that her exceptions to the proposed findings were insufficient. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

37-51-303. Broker or salesperson examination.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at end after "examination" deleted "prescribed by or under the supervision of the board. The examination must be given at least once each 6 months and at places within the state that the board prescribes." Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (1) near middle of first sentence substituted "an examination prescribed" for "a written examination prepared"; at end of (2)(a) inserted "subject portions that the board determines by rule to be appropriate"; deleted former (2)(a)(i) and (2)(a)(ii) that read: "(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter"; near middle of (2)(b) after "examination" deleted "(2)(a)(i) or (2)(a)(ii)"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner throughout section substituted "salesperson's" for "salesman's".

1981 Amendment: Deleted former subsection (4) requiring an applicant, following two failures, to wait 6 months before another reexamination.

Administrative Rules

ARM 24.210.602 Examination.
ARM 24.210.611 Application for license — salesperson and broker.

37-51-306. Transactions with nonresidents and with nonlicensed brokers, salespersons, or property managers — consent to legal process.

Compiler's Comments

2015 Amendment: Chapter 211 in (1) at end of first sentence inserted "or a licensed property manager"; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

1999 Amendment: Chapter 170 in (1) near middle of second sentence after "another state" inserted "or jurisdiction". Amendment effective March 24, 1999.

1995 Amendments: Chapter 429 deleted third sentence in (1) that read: "This subsection does not limit the next subsection"; deleted former (2) that read: "(2) A person who is licensed as a broker or a salesman in another state may obtain a license as a broker or as a salesman in this state by complying with this chapter and with the rules of the board. However, this section applies only to licensees of other states that offer the same privileges to the licensees of this state. A nonresident licensee need not maintain a place of business in this state. The board may:

(a) authorize the department to license a nonresident without examination if he files with the department an authorized or certified copy of the license issued in another state and pays to the department the same license fee as is required for obtaining a license in this state;

(b) refuse to authorize the department to issue a license to an applicant who is not a resident of this state; and

(c) enter into reciprocal agreements with other states"; and made minor changes in style.

Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: Two times in (2) and three times in (3) substituted reference to licensee for reference to broker; substituted first sentence of (2) relating to licensure of licensed broker or salesman from another state and to compliance with Board rules for former first sentence that read: "A nonresident of this state actively engaged in the real estate business who maintains a place of business in another state and who has been licensed in the other state to conduct this business in that state may obtain a license as a broker in this state by complying with this chapter"; near beginning of (2)(a), after "nonresident", deleted "broker", near middle, after "issued", deleted "to the nonresident for conducting this business", and near end, before "license", deleted "broker's"; in (2)(b), before "license", deleted "broker's"; inserted (2)(c) allowing reciprocal agreements; near end of second sentence of (3) substituted "licensee" for "nonresident broker and his salesman or agent"; and made minor changes in style. Amendment effective February 6, 1991.

Preamble: The preamble attached to Ch. 11, L. 1991, provided: "WHEREAS, it has been determined that it is in the best interest of Montana real estate licensees to be able to obtain licenses in other states and to allow the Board of Realty Regulation to enter into reciprocal licensing agreements with other states."

Administrative Rules

ARM 24.210.629 Reciprocity.

Case Notes

Venue of Action Against Nonresident: Nonresident defendant who had filed consent referred to by statute could be sued in any county of Montana in which plaintiff resided, but two other defendants, appearing separately by motion for change of venue, had right to have venue changed to county of their residence. Young v. Savage, 137 M 174, 351 P2d 227 (1960).

Attorney General's Opinions

Licensing Regulations Not Applicable to Finder's Fee: A person is not required to be licensed as a real estate broker or salesperson in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate. Further, a broker's license should not be revoked or suspended for paying a finder's fee when the payee does not perform any negotiation or other services regulated by real estate licensing law. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

37-51-308. Broker's office — display — notice to department of change of address.

Compiler's Comments

2017 Amendment: Chapter 27 in (1) in first sentence substituted "original license or a copy of the current license" for "original license" and after "the broker" deleted "and, if the broker is a supervising broker, the original license of each salesperson associated or under contract with the broker"; inserted (2) requiring broker to display license of salesperson associated with the broker and requiring salesperson's license to include name and address of broker; in (3) in last sentence after "license" inserted "to the broker"; and made minor changes in style. Amendment effective February 17, 2017.

2011 Amendments — Composite Section: Chapter 79 in (1) in second sentence near middle inserted "if the broker is a supervising broker"; in (2) after "paying the required" substituted current text for "fee, whereupon a license for the new location must be issued for the unexpired period"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 100 in (1) in first sentence at beginning substituted "A licensed broker" for "A resident licensed broker", after "shall maintain a" substituted "designated physical address where" for "fixed office in this state", and at end deleted "in the office" and in second sentence substituted current language for "The address of the office and any branch office shall be designated on the broker's license"; in (2) substituted "broker" for "licensee" and "physical address" for "location of this office"; and made minor changes in style. Amendment effective October 1, 2011.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Saving Clause: Section 6, Ch. 79, L. 2011, was a saving clause.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in (1) substituted "salesperson" for "salesman".

37-51-309. Broker — salesperson — for-sale-by-owner personal transactions of salesperson — notice to department of change of association.

Compiler's Comments

2017 Amendment: Chapter 27 in (1) after "under contract to" inserted "or perform services for" and after "broker" deleted "or perform services for a broker with a supervising broker endorsement other than the one designated on the license issued to the salesperson"; in (2) substituted current text concerning requirements for a salesperson to change association from one supervising broker to another, notification requirements for the successor supervising broker, and requirements for the issuance of a new license for former text that read: "(2) When a licensed salesperson desires to change association or contractual relationship from one supervising broker to another, the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued. A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson has been issued a license to work for or with that supervising broker. On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's supervising broker, who shall return it to the department for cancellation"; inserted (3) concerning placement of salesperson's license on inactive status; inserted (4) concerning termination of supervision of a salesperson by a supervising broker; and made minor changes in style. Amendment effective February 17, 2017.

2013 Amendment: Chapter 414 throughout section in six places substituted references to for sale by owner personal transaction for references to personal transaction; in (4)(b) after "broker" inserted "or real estate firm" and after "salesperson" deleted "if: (i) the personal transaction does not involve the salesperson's supervising broker or real estate firm; and (ii)"; in (4)(c) substituted "salesperson shall disclose" for "salesperson discloses"; inserted (4)(d) concerning liability for failure to provide disclosure; in (5) substituted "section" for "part"; and made minor changes in style. Amendment effective May 6, 2013.

2011 Amendment: Chapter 79 in (1) substituted "supervising broker" for "licensed broker", near middle inserted "with a supervising broker endorsement", and at end inserted exception; in (2) in second sentence in two places and in third sentence, in (4)(a) near middle, in (4)(b) near beginning, and in (4)(b)(ii) near end inserted "supervising" before "broker"; in (2) in first sentence substituted "supervising broker" for "licensed broker"; in (4)(b) at end inserted "if"; inserted (4)(b)(i) regarding supervising brokers; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 6, Ch. 79, L. 2011, was a saving clause.

2001 Amendments — Composite Section: Chapter 294 inserted (4) providing that provisions of chapter do not prohibit salesperson from engaging in personal transactions; inserted (5) defining personal transaction; and made minor changes in style. Amendment effective April 20, 2001.

Chapter 492 in (1) near middle after "more than one licensed broker" deleted "owner"; in (2) in first sentence near end after "and return the salesperson's license" deleted "and pocket card", in second sentence in two places after "broker" deleted "owner", and in third sentence after "the salesperson shall surrender the salesperson's license" substituted "to the salesperson's broker" for "and pocket card to his broker owner"; deleted former (4) that read: "(4) A broker associate may not be associated with more than one broker owner"; and made minor changes in style. Amendment effective October 1, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner throughout section substituted "salesperson" or "salesperson's" for "salesman" or "salesman's".

Administrative Rules

ARM 24.210.601 General license administration requirements.

37-51-311. Fees — deposit of fees.

Compiler's Comments

1995 Amendment: Chapter 429 deleted (2) that read: "(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not pay any fee assessed by the board for the purpose of funding the real estate recovery account during the period the licensee remains in inactive status"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: In (2) near middle of second sentence, after "need not", substituted remainder of sentence for "file a bond with the department as provided in 37-51-304"; and deleted former (3) that read: "The board shall adopt a schedule of fees. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted "following" after "The" at the beginning of (1); inserted "prescribed by the board" after "fees" near the beginning of (1); deleted subsections (1)(a) through (1)(k) which specified the maximum fees for various licenses; substituted "charge an annual fee" for "charge a $5 annual fee" in the first sentence of (2); and deleted "within the limits set by this section" after "adopt a schedule of fees" at the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.210.401 Fee schedule.

ARM 24.210.625 Inactive to active license status.

37-51-312. No taxation by municipality.

Compiler's Comments

2005 Amendment: Chapter 400 in (1) near beginning after "license fee or" inserted "license", after "salesperson" inserted "as a condition to the practice of the broker's or salesperson's profession", and at end inserted "including a local government with self-governing powers"; inserted (2) regarding imposition of general business license fee or tax; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner substituted "salesperson" for "salesman".

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

City Licensing: A city can license local aspects of interstate commerce if not a direct burden or impediment; but, enterprises preempted by state regulation are not subject to city licensing. 37 A.G. Op. 100 (1977).

City Licensing of Real Estate Firms: A city may not require real estate firms to obtain business licenses. 37 A.G. Op. 71 (1977).

37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 482, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 27 in (5)(b) at end substituted "ability of the buyer to perform on any purchase offer" for "property". Amendment effective February 17, 2017.

2015 Amendment: Chapter 211 inserted (10) related to written agreements; and made minor changes in style. Amendment effective April 9, 2015.

Severability: Section 7, Ch. 211, L. 2015, was a severability clause.

2007 Amendment: Chapter 118 in (2)(a) and (4)(a) at end inserted exception clause; in (2)(c) at end inserted "with a buyer or another seller"; in (4)(c) at end inserted "with another buyer or a seller"; inserted (11)(b)(ii)concerning disclosure of adverse material facts; and made minor changes in style. Amendment effective April 3, 2007.

2005 Amendment: Chapter 389 inserted (8) providing that except for licensing requirements for property managers, a licensed real estate broker or salesperson is only required to meet requirements of part 6 and board rules governing a licensed property manager in management of properties for owners; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendment: Chapter 170 in (1) in first sentence after "intended to" inserted "replace the duties of agents as provided elsewhere in state law and" and inserted second sentence defining terms; and made minor changes in style. Amendment effective March 24, 1999.

Case Notes

Failure to Disclose City Zoning Ordinance, Water and Mold Damage Alleged — Negligence, Constructive Fraud, and Consumer Protection Act Violations Alleged — Duty of Care for Real Estate Professionals. Young v. ERA Advantage Realty, 2022 MT 138, 409 Mont. 234, 513 P.3d 505.

Professional Negligence — Expert Testimony Not Required to Establish Standard of Care — Statutory Standard Applicable: The plaintiff sued his real estate agent after land for which he had entered into a buy-sell agreement with a landowner was sold to a different purchaser, who had also been represented by the same real estate agent. The plaintiff sued the defendant for professional negligence; however, the District Court granted summary judgment in favor of the defendant after the plaintiff disclosed he did not intend to call an expert witness on a real estate agent's duties. On appeal, the Supreme Court reversed, holding that expert testimony on a real estate agent's duties may not have been necessary given that 37-51-313 sets forth those duties. The court concluded that the plaintiff had presented sufficient evidence for the claims to be presented to a jury and remanded the matter for further proceedings. Wagner v. MSE Technology Applications, Inc., 2016 MT 215, 384 Mont. 436, 383 P.3d 727. See also Young v. ERA Advantage Realty, 2022 MT 138, 409 Mont. 234, 513 P.3d 505.

No Duty by Seller's Agent to Inspect or Discover Adverse Facts: The requirement to "ascertain all pertinent facts" found in 37-51-313(13) is not a restatement of common law duties and does not require a seller's agent to inspect property or verify a seller's statements. Rather, it is a duty to disclose any adverse facts that the seller's agent is aware of and to disclose when the seller's agent has no personal knowledge of the veracity of the seller's statements. Watterud v. Gilbraith, 2015 MT 288, 381 Mont. 218, 358 P.3d 891.

Simultaneous Representation of More Than One Buyer by Same Buyer Agent — Conflict of Interest: Because a buyer agent must act solely in the best interests of the buyer, a conflict of interest and breach of obligation arises when a buyer agent simultaneously represents more than one buyer competing for the same property. Zuazua v. Tibbles, 2006 MT 342, 335 M 181, 150 P3d 361 (2006).

Professional Negligence — Expert Testimony Required to Establish Standard of Care — Statutory Standard Inapplicable: May sued a Bozeman real estate company and real estate agent over the sale of his service station and alleged professional negligence on the part of the agent as one of his claims for relief. The Supreme Court affirmed the District Court's holding that the defendants were entitled to summary judgment because May had not listed an expert witness to give expert testimony to establish the standard of care for the agent. The Supreme Court distinguished Durbin v. Ross, 276 M 463, 916 P2d 758 (1996), and relied upon Newville v. St., 267 M 237, 883 P2d 793 (1994), reasoning that real estate sales is among the professions requiring special knowledge and that a lay jury could not pass judgment on the question of whether an individual correctly used that knowledge without the assistance of expert testimony.

The Supreme Court also held that inasmuch as this section had not been enacted until after the instant case arose, the statute could not be relied on to provide express duties of the agent. May v. ERA Landmark Real Estate of Bozeman, 2000 MT 299, 302 M 326, 15 P3d 1179, 57 St. Rep. 1256 (2000). However, see Wagner v. MSE Technology Applications, Inc., 2016 MT 215, 384 Mont. 436, 383 P.3d 727, in which the Supreme Court ruled that expert testimony may not be necessary for a claim of professional negligence because those duties are now outlined in statute.

37-51-314. Relationship disclosure requirements.

Compiler's Comments

2005 Amendment: Chapter 389 inserted (8) requiring broker or salesperson managing properties for owners to disclose to all customers and clients the contractual relationship of broker or salesperson; inserted (9) providing that broker or salesperson acting only as property manager is not required to provide another relationship disclosure and that required contractual relationship disclosure is sufficient disclosure; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendment: Chapter 170 in (2)(a) at beginning inserted "The initial disclosure, as provided in subsection (6), must be made" and at end deleted "or, if the seller agent is acting as a seller subagent, at the time negotiations commence"; inserted (2)(b) regarding disclosure of a broker acting as a seller subagent; in (2)(c) at beginning inserted "The subsequent disclosure established in subsection (7) must be made"; in (3)(a) at beginning inserted "The initial disclosure, as provided in subsection (6), must be made" and at end deleted "or, if the buyer agent is acting as a buyer subagent, at the time negotiations commence"; inserted (3)(b) regarding disclosure of a broker acting as a buyer subagent; in (3)(c) at beginning inserted "The subsequent disclosure established in subsection (7) must be made"; inserted (4)(a) and (4)(b) regarding initial and subsequent disclosure; in (5) in first sentence after "agent who" inserted "contemplates becoming or" and after "disclose the" inserted "potential or actual" and inserted second sentence regarding disclosure by an agent who contemplates becoming a dual agent; substituted language in (6) setting out the form of initial disclosure for former text that read: "(6) A disclosure required by this section must be signed and dated by the party to whom the disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the following information:

(a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your agent or subagent in the sale of your property located at (address of property). Your seller agent is obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to give this consent, your opportunity to sell your property to that buyer may be lost.

Your seller agent is obligated to you as follows:

(1) to act solely in the best interests of the seller to the exclusion of all other interests, including those of the seller agent;

(2) to obey promptly and efficiently all lawful instructions of the seller;

(3) to disclose to the seller all relevant and material information that concerns the real estate transaction and that is known by the seller agent and not known by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the seller's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established in the listing agreement;

(6) to fully account to the seller for all funds or property of the seller coming into the seller agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the listing agreement."

(b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with respect to the seller's property located at (address of property). Although the seller agent is primarily obligated to the seller, the seller agent is obligated to you as specified below.

A seller agent is obligated to a buyer as follows:

(1) to disclose to a buyer any adverse material facts that concern the property and that are known to the seller agent;
(2) to deal in good faith with the buyer; and
(3) to comply with all applicable federal and state laws, rules, and regulations.
"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony."

(c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your agent or subagent in the purchase of real property of the nature described in the buyer broker agreement. Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller of property that you become interested in, a dual agency may be created. In a dual agency relationship, the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost.

Your buyer agent is obligated to you as follows:
(1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;
(2) to obey promptly and efficiently all lawful instructions of the buyer;
(3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;
(4) to safeguard the buyer's confidences;
(5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;
(6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;
(7) to comply with all applicable federal and state laws, rules, and regulations; and
(8) to carry out the terms of the buyer broker agreement."

(d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below.

A buyer agent is obligated to a seller as follows:
(1) to disclose to a seller any adverse material facts that concern the ability of the buyer to perform on any purchase offer and that are known to the buyer agent;
(2) to deal in good faith with the seller; and
(3) to comply with all applicable federal and state laws, rules, and regulations.
"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(e) Statutory broker disclosure to the buyer and seller: "(Name of statutory broker) will be involved as a statutory broker with respect to the purchase and sale of real property located at (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

A statutory broker is obligated to the parties as follows:
(1) to disclose to a buyer any adverse material fact that concerns the property and that is known to the statutory broker and not known to the buyer. However, the statutory broker is not required to conduct an independent inspection of the property or to verify any representation made by the seller.
(2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to perform on the purchase offer and that is known to the statutory broker and not known to the seller;

(3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the property; and

(4) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer interested in purchasing the property and of the seller of the property located at (address of property). A dual agent is obligated to the buyer and seller as follows:

(1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests including the dual agent's;

(2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

(3) to disclose to the buyer and seller all relevant and material information that concerns the real estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives as established in the listing agreement and buyer broker agreement;

(5) to fully account to the buyer and seller for all funds or property of the buyer and seller coming into the dual agent's possession;

(6) to comply with all applicable federal and state laws, rules, and regulations;

(7) to carry out the terms of the buyer broker agreement; and

(8) to safeguard the buyer's and seller's confidences, subject to the obligation to disclose to a buyer or a seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations. The following may not be disclosed without the written consent of the party to whom the information is confidential:

(a) that the buyer is willing to pay more than the buyer has offered for the property;

(b) that the seller is willing to accept less than the asking price for the property;

(c) factors motivating the buyer to buy or the seller to sell; and

(d) any other information that a party specifically indicates in writing to the dual agent is to be kept confidential and that is not an adverse material fact.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

Upon signing this disclosure form, the buyer and seller acknowledge that they understand the obligations owed by a dual agent to them and consent to the dual agent representing them as a dual agent""; inserted (7) setting out form of subsequent disclosure; inserted (8) setting out information permitted in any required disclosure; and made minor changes in style. Amendment effective March 24, 1999.

Case Notes

Alleged Failure to Disclose Agency Relationship — Resolution of Conflicting Evidence — Alternative Findings Not Required: Garrison purchased property on Flathead Lake through Averill, a real estate broker. Later, Garrison filed suit against Averill and the seller of the property, alleging that he, Garrison, considered Averill his agent and relied on Averill to represent his interests and that Averill was aware of that reliance. Garrison also argued that the District Court ignored testimony from his expert to the effect that Averill breached the standard of care by failing to document his disclosure to Garrison of his agency relationship with the seller. Garrison also alleged that Averill was negligent and that the negligence caused Garrison's damages. The Supreme Court pointed out testimony in the record from Averill's expert and concluded that the District Court had not ignored the testimony presented by Garrison but simply resolved conflicting evidence against Garrison. Citing Yellowstone Basin Properties, Inc. v. Burgess, 255 M 341, 843 P2d 341 (1992), the Supreme Court held that just because there is evidence in the record on which the District Court could have based certain findings of fact does not require the District Court to make those findings. Garrison v. Averill, 282 M 508, 938 P2d 702, 54 St. Rep. 454 (1997).

37-51-315. Vicarious liability.

Compiler's Comments

2001 Amendment: Chapter 492 in (2) in introductory clause after "made by the broker's" deleted "broker associate or"; in (2)(b) at beginning substituted "the subagent" for "a broker associate" and at end after "independent contractor" deleted "or subagent"; and in (2)(c) near beginning after "a broker" deleted "associate". Amendment effective October 1, 2001.

37-51-321. Unprofessional conduct — sanction of license.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 250, L. 2023, inserted (2)(b)(ii) concerning when hosting advertisements on a website is not unprofessional conduct; and made minor changes in style. Amendment effective April 25, 2023.

Section 6, Ch. 381, L. 2023, inserted (1)(x) concerning aiding or abetting adverse action against licensee for speech or conduct that is protected under the Montana constitution or the United States constitution; and made minor changes in style. Amendment effective October 1, 2023.

Section 15, Ch. 482, L. 2023, in (1)(s) at end deleted "a property manager"; in (1)(u) near middle substituted "37-56-105 through 37-56-107" for "part 6 of this chapter"; in (3) near middle deleted "property manager"; and made minor changes in style. Amendment effective October 1, 2023.

2019 Amendment: Chapter 358 inserted (1)(w) concerning failing to maintain continuous professional liability insurance; and made minor changes in style. Amendment effective November 1, 2020.

2017 Amendment: Chapter 27 in (1) in introductory clause substituted current text concerning practices that constitute unprofessional conduct for former text that read: "The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices"; in (1)(e) substituted "licensee's" for "broker's or salesperson's"; in (1)(l) at beginning inserted "as a broker or a salesperson"; in (1)(n) at beginning inserted "as a salesperson"; in (1)(p) at beginning inserted "unless exempted"; in (1)(s) at end inserted "or a property manager"; in (1)(v) substituted "licensee's" for "broker's or salesperson's"; in (3) substituted current text concerning sanctioning of license of broker, salesperson, or property manager for former text that read: "The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1)"; and made minor changes in style. Amendment effective February 17, 2017.

2005 Amendment: Chapter 389 inserted (1)(u) providing for revocation or suspension of real estate broker's or salesperson's license for failing to meet requirements of part 6 or board rules governing property management of properties for owners; inserted (1)(v) providing for revocation or suspension of real estate broker's or salesperson's license for failing to disclose to customers and clients, including owners and tenants, contractual relationship while managing properties for owners; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 294 in (1)(r) substituted "supervising broker" for "registered broker" and at end inserted exception clause; and made minor changes in style. Amendment effective April 20, 2001.

1999 Amendment: Chapter 170 in (1)(a) near middle of second sentence after "broker's own name" substituted "or" for "in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and" and at end inserted "in the franchise name or logotype". Amendment effective March 24, 1999.

1995 Amendment: Chapter 565 in (1)(l), after "real property", substituted "directly with a seller or buyer" for "directly with an owner or lessee", substituted "seller or buyer" for "owner", and after "outstanding" substituted "listing agreement or buyer broker agreement" for "contract"; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1993 Amendment: Chapter 246 at end of second sentence of (1)(a) inserted "and the trade name, if any, by which the office is known"; in (1)(g), after "transaction", inserted "including failing to disclose in advertisements for real property the person's dual capacity as broker and principal"; inserted (2) requiring a broker or salesperson to have a signed listing agreement from the property owner prior to openly advertising the property and providing a penalty; and made minor changes in style.

Administrative Rules

ARM 24.210.641 Unprofessional conduct.

ARM 24.210.646 Disciplinary guidelines — public notice.

Case Notes

Expert Testimony Unnecessary on Issue of Standard of Care — District Court Not Directed as to All Expert Testimony on All Claims: Durbins purchased a home through the seller's realtors. Contrary to the representations of the realtors, Durbins discovered that the property had no legal septic system, that the household water was unsafe to use for any purpose, and that the access road was located on the neighbor's property. Durbins brought an action against the realtors, alleging negligent misrepresentation, actual and constructive fraud, and statutory violations involving the Montana real estate licensing laws and the Montana Unfair Trade Practices and Consumer Protection Act of 1973. The defendants sought and achieved dismissal of the case on the grounds that Durbins failed to prove through expert testimony the applicable standard of care of the realtors. The Supreme Court held that expert witnesses were unnecessary to prove a standard of care. Durbins also asked that the Supreme Court direct the District Court to exclude testimony of any expert witnesses on any claim asserted by the Durbins. The Supreme Court noted that the District Courts have great latitude concerning the admissibility of evidence and that the District Court would in any event have to comply with Rule 702, M.R.Ev. (Title 26, ch. 10). The Supreme Court therefore declined to direct the District Court as requested by the Durbins. Durbin v. Ross, 276 M 463, 716 P2d 758, 53 St. Rep. 471 (1996).

Board of Realty Regulation Not Empowered to Award Damages — Complaint to Board Inadequate Notice of Legal Claim: The Board of Realty Regulation may only revoke or suspend a broker's license and has no power to award damages for negligence or fraud. Further, because the Board is not designated by law as a quasi-judicial board pursuant to 2-15-124, a complaint to the Board does not give adequate notice of the existence of a legal claim. Erickson v. Croft, 233 M 146, 760 P2d 706, 45 St. Rep. 1379 (1988).

No Duty to Disclose What Seller Already Knows: On the question of a real estate agent's duty to inform sellers of the buyer's offer to secure the balance of the purchase price for property with bonds encumbered by margin loans, the Supreme Court noted that the sellers' attorneys were aware of this fact from buyer's initial proposals. The real estate agent had no duty to disclose what the sellers already knew. Bills v. Hannah, Inc., 230 M 250, 749 P2d 1076, 45 St. Rep. 179 (1988).

No False Representations by Real Estate Agent — Dismissal Proper: Real estate agent was properly dismissed from an action involving fraudulent misrepresentations of income by the seller of a business when it was found the agent concealed nothing from buyers and had no knowledge of and made no representations to buyers concerning business profitability. Selvidge v. McBeen, 230 M 237, 750 P2d 429, 45 St. Rep. 168 (1988).

Charges of Incompetence and Untrustworthiness Not Determined by Issuance of Broker's License: A complaint was filed against Sorini, a licensed real estate salesperson, for violations of this section relating to her competence and trustworthiness. After charges were filed, she was allowed to sit for the real estate broker's examination and was subsequently issued a broker's license. On appeal, she argued that the question of her competence or trustworthiness became moot because the Board of Realty Regulation was required to consider those characteristics before issuing her a broker's license under 37-51-302. The Supreme Court noted that while the Board is required by statute to determine that an applicant for a broker's license meets certain standards, in the absence of evidence that the Board considered the pending charges, the determination that she met the standards of conduct was not dispositive of the pending charges against her. The court found no such evidence in the record and concluded that the issue of competence and trustworthiness as raised by the charges was not determined by the issuance of the real estate broker's license. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

No Board Requirement to Rule With Particularity on Objections and Exceptions: Proposed findings of fact and conclusions of law as prepared by a hearing examiner detailed the factual basis for his conclusion that the Board of Realty Regulation had power to suspend or revoke Sorini's broker's license. Prior to her appearance before the full Board, Sorini submitted her contentions of claimed error in the findings and conclusions. The Board considered these contentions and voted unanimously to adopt the findings and conclusions of the hearing examiner. On appeal, the Supreme Court held that Sorini was entitled to nothing further and that the Board was not required to specifically state in writing that her exceptions to the proposed findings were insufficient. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Penalty Not Unusual or Unwarranted: Sorini argued that the revocation of her broker's license was based on a finding by a hearing examiner that the mortgage on her client's home was foreclosed due to her actions. The violations with which she was charged did not include causing the foreclosure, and she maintained that she was punished to an unusual and unwarranted degree for the violations with which she was charged. The Supreme Court noted that the Board of Realty Regulation found that Sorini had violated three statutory prohibitions under this section, any one of which would result in revocation or suspension at the Board's discretion. There were enough facts before the Board to allow revocation without considering whether Sorini caused the foreclosure. The court held that the penalty was not unusual or unwarranted. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Revocation of Real Estate Broker's License — No Denial of Rights at Administrative Hearing — Hearing Examiner and Board Attorney as Deputy Attorneys General: A hearing examiner recommended that Sorini's real estate broker's license be revoked for violations of this section. On appeal, Sorini argued that she was denied her rights at the administrative hearing because both the hearing examiner and the attorney for the Board of Realty Regulation were deputies in the Attorney General's office; however, she failed to submit any proof to support this allegation. The Supreme Court noted that 2-4-611 establishes the manner in which a party may file an affidavit for disqualification of a hearing examiner, holding that in the absence of an affidavit it was not proper to raise the issue on appeal. The court agreed that having a greater separation of prosecutorial and decisionmaking functions would eliminate an appearance of impropriety, but found nothing to warrant a reversal of the District Court. In re Sorini, 220 M 459, 717 P2d 7, 43 St. Rep. 526 (1986).

Broker Malpractice — Failure to Provide Copy of Assignment: A real estate agent was found by the trial court to have been culpable of broker malpractice along with her broker in failing to supply purchasers, who had assigned their purchase interest to the agent and broker, with a copy of the assignment. However, the Supreme Court held that the agent was in no position to give the purchasers a copy of the assignment because not all the purchasers signed the assignment at the same time. The agent turned the partially signed document over to the broker for the remaining purchaser to sign. Hoefer v. Wilckens, 210 M 218, 684 P2d 468, 41 St. Rep. 1019 (1984).

Aggrieved Persons — Persons Sustaining Damages — Waiver of Damages: Appellants do not qualify as aggrieved persons or persons sustaining damages for an alleged violation of 37-51-321(9) when suing a broker over an alleged defect in an easement purportedly conveyed to the appellants because appellants failed to first establish the nonexistence of the easement in question. Secondly, and more importantly, appellants waived any claim for damages by closing the transaction after they became aware of the alleged defect in the easement. Van Ettinger v. Pappin, 180 M 1, 588 P2d 988, 35 St. Rep. 1956 (1978).

Agent Seller — Bond Coverage: Members of the public have the right to rely upon express or implied representations of a licensed real estate agent or broker, although the agent is in fact the owner of the property being sold. Therefore, the surety is bound by such express or implied representations, and the bond must cover such judgments entered. Twite v. W. Sur. Co., 176 M 286, 577 P2d 1219 (1978).

Misrepresentation Action in Real Estate Sale: The court properly awarded summary judgment to defendants in a misrepresentation action under the Montana Real Estate License Act of 1963 (Ch. 250, L. 1963) when the record indicated that no fraudulent representations were made by defendants and the Statute of Limitations had expired, notwithstanding the "discovery" exception. Anderson v. Applebury, 173 M 411, 567 P2d 951 (1977).

Fraudulent Listing: Broker who obtained exclusive listing through a discharged real estate salesman and assured seller that he would "get rid" of a prior exclusive listing of same property which seller had made with another broker was in violation of this section. Johnson v. Doran, 167 M 501, 540 P2d 306 (1975).

Wide Range of Evidence Allowed in Fraud Cases: Where broker induced sellers to sign listing agreement coupled with option to purchase, knowing different broker had exclusive listing, which caused sellers considerable expense, it was not error for trial court to allow wide range of evidence in order that fraud may be detected and exposed, as fraud assumes many shapes, disguises, and subterfuges and is generally so secretly hatched that it can only be detected by a consideration of facts and circumstances which are not infrequently trivial, remote, and disconnected. Johnson v. Doran, 167 M 501, 540 P2d 306 (1975).

Civil Liability Resulting From Violation: Vendor was entitled to cancellation of contract for sale of land as well as damages from real estate broker for misrepresentations relating to marketability of title made by broker during course of dealings with vendor in violation of subsections (2) and (3) of this section. The vendee was entitled to damages from broker for misrepresentations and failure to remit vendee's earnest money to vendor in violation of subsections (2), (3), and (5) of this section. Stafford v. Love, 151 M 270, 442 P2d 190 (1968).

Innocent Misrepresentation of Acreage: Misrepresentation as to acreage of tract offered by broker was not in itself sufficient ground for cancellation of license where acreage stated was that stated by landowner, broker had no reason to believe that acreage stated was incorrect, and prospective purchaser had been over the tract and was not deceived by the misrepresentation. Meyer v. Unroe, 139 M 174, 362 P2d 218 (1961).

Attorney General's Opinions

Licensing Regulations Not Applicable to Finder's Fee: A person is not required to be licensed as a real estate broker or salesman in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate. Further, a broker's license should not be revoked or suspended for paying a finder's fee when the payee does not perform any negotiation or other services regulated by real estate licensing law. 43 A.G. Op. 8 (1989), distinguishing 34 A.G. Op. 23 (1972).

37-51-324. Penalty for failure to comply with trust account requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 482, L. 2023. Amendment effective October 1, 2023.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

Effective Date: This section is effective October 1, 2007.

Administrative Rules

ARM 24.210.426 Trust account requirements.
ARM 24.210.643 Citations and fines.

37-51-325. Professional liability insurance required — errors and omissions insurance coverage — policy requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 220, L. 2023. Amendment effective April 24, 2023.

2021 Amendment: Chapter 22 in (1) in first sentence and in (2) in introductory clause after "salesperson" substituted "with an active real estate license" for "licensed"; and in (8) in first sentence substituted "obtain a real estate broker or salesperson license or renew an active real estate broker or salesperson license" for "obtain or renew a real estate broker or salesperson license". Amendment effective October 1, 2021.

Effective Date: Section 4, Ch. 358, L. 2019, provided: "[This act] is effective November 1, 2020."

Part 4
Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesperson.

Compiler's Comments

1995 Amendment: Pursuant to sec. 6, Ch. 565, L. 1995, the Code Commissioner in two places substituted "salesperson" for "salesman".

Case Notes

Receipt of Asking Price and Licensing — Only Requirements for Commission: Defendants decided to sell their ranch and were contacted by plaintiff, a real estate salesperson. Defendants listed the ranch on a nonexclusive basis for $1.6 million and agreed to pay a 5% commission on the sale. Plaintiff presented offers from Semenza, which were rejected. Later, Semenza offered the asking price, and a contract to sell and purchase was executed, reciting that Semenza had paid $50,000 to plaintiff as earnest money. Semenza failed to obtain financing by the closing date, and it was determined he had never paid the earnest money to plaintiff. A new agreement to sell was executed, referencing the obtaining of long-term financing, at a meeting at which defendants were again represented by counsel. The transaction was closed, and defendants refused to pay plaintiff his commission, contending he was not a licensed broker as claimed at the time they entered the agreement and that he had actually represented the buyer. On appeal from a summary judgment, the Supreme Court found that under 37-51-401 a person need only be a licensed salesperson to receive a commission and that plaintiff was a licensed broker at the time the transaction closed. The defendants received their asking price through plaintiff's efforts, even though Semenza had to bring in a partner. There was no evidence defendants were damaged by the claimed conflict of interest. They ratified the entire transaction and were represented by competent counsel throughout. Deimler v. Ostler, 200 M 350, 651 P2d 41, 39 St. Rep. 1797 (1982).

Pretrial Order and Evidence to Establish Standing: In an action for a real estate commission, the real estate broker (Nardi) did not allege himself to be a licensed broker in his initial complaint. The pretrial order, however, contained an amendment to the complaint stating that Nardi was a licensed real estate broker. In addition, Nardi introduced his broker's license at trial. The pretrial order and the exhibit adequately proved Nardi to be licensed pursuant to the statute, giving him standing to sue. Nardi v. Smalley, 197 M 321, 643 P2d 228, 39 St. Rep. 606 (1982).

When Recovery of Compensation Not Barred — Out-of-State Services: Where defendant agreed to pay commission for brokerage services rendered by out-of-state plaintiff not licensed in Montana and services were performed by plaintiff both within and without Montana, the fact that recovery cannot be had for services rendered in Montana because of proscription of this section does not prevent recovery for services rendered out of the state. Ryckman v. Wildwood, Inc., 197 M 154, 641 P2d 467, 39 St. Rep. 378 (1982).

Completing Sale Distinguished From Finding Purchaser: In action to recover broker's commissions purportedly due and owing from sale of property owned by defendant, the Supreme Court held that the defendant was not liable because plaintiff broker failed to perform the terms of the exclusive listing agreement by completing the sale. It was insufficient under this agreement to merely find a purchaser. Diehl & Associates v. Houtchens, 173 M 372, 567 P2d 930 (1977), followed in Blumfield Agency v. Little Belt, Inc., 203 M 515, 663 P2d 1164, 40 St. Rep. 605 (1983).

Deal Held Not Option but Sale Entitling Broker to Commission: Where owner left deed to real property with broker under agreement to pay him 5% commission if he found party acceptable purchaser and broker produced a prospective purchaser who agreed to forfeit $200 downpayment if by a specified date he failed to meet the major portion of the purchase price, which proposal owner and his wife accepted in writing with the payment, the transaction was a sale and not a mere option, and broker was entitled to his commission. Anderson v. Craig, 111 M 182, 108 P2d 205 (1940).

Waiver of License Issue: Failure to allege license is waived where defendant fails to take advantage thereof by special demurrer (demurrer abolished, former Rule 7(c), M.R.Civ.P., now superseded, and 25-31-503, now repealed) or answer, a general demurrer (demurrer abolished) not reaching the point. Piatt & Heath Co. v. Wilmer, 87 M 382, 288 P 1021 (1930).

Isolated Transactions: Under former provision (sec. 3, Ch. 195, L. 1921, repealed by Ch. 250, L. 1963) defining real estate broker and setting forth classes exempted from Ch. 195, L. 1921, provision similar to this section had no application to one who acted as a broker in connection with a single transaction only. Harbolt v. Hensen, 78 M 228, 253 P 257 (1927).

Nonbroker Not Required to Prove Status — Waiver of Issue: This section did not require one who was not a real estate broker to allege and prove that he was not a broker; failure of defendant to raise issue of license in answer waived the point. Harbolt v. Hensen, 78 M 228, 253 P 257 (1927).

CHAPTER 54
REAL ESTATE APPRAISERS

Chapter Compiler's Comments

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41], [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30."

1991 Statement of Intent: The statement of intent attached to Ch. 409, L. 1991, provided: "A statement of intent is required for this bill because [section 4] [37-54-105] grants rulemaking authority to the newly established board of real estate appraisers.

(1) It is the intent of [section 4] [37-54-105] that the board have authority to adopt rules to implement and enforce [sections 1, 2, and 4 through 28] [Title 37, chapter 54], including specific authority to adopt rules regarding:

(a) license and certificate applications and procedures necessary to receive and process those applications;

(b) examinations and criteria for grading examinations;

(c) disciplinary standards for licensees and certificate holders, including definitions of conduct for which discipline may be appropriate;

(d) continuing education requirements;

(e) the investigation of complaints received under [section 10] [37-54-401, now repealed];

(f) the setting and modification of appropriate fees;

(g) a process for renewal of licenses and certificates, including a procedure for late renewal;

(h) the retention of board records;

(i) the adoption and modification of standards of professional appraisal practice as set out in [section 13] [37-54-403];

(j) reciprocity conditions applicable to licensure and certification as set out in [section 23] [37-54-417, now repealed]; and

(k) procedures for granting temporary permits as set out in [section 28] [37-54-406, now repealed].

(2) It is the intent of [section 3] [2-15-1868 (renumbered 2-15-1758)] that the governor have the authority to implement staggered terms for board members during the appointment process.

(3) It is intended that the board of real estate appraisers address by rule the implementation of practices mandated for the profession by future federal legislation and notify the department of commerce [now department of labor and industry] of statutory changes necessary to effect those practices, to allow consideration by the legislature."

Severability: Section 29, Ch. 409, L. 1991, was a severability clause.

Appraiser Licensure — Response to Federal Law: Enactment of Montana law regarding licensure of real estate appraisers was necessitated in part by regulatory provisions promulgated under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, August 9, 1989, 12 U.S.C. 1833, et seq.

Chapter Administrative Rules

Title 24, chapter 207, ARM Board of Real Estate Appraisers.

Chapter Case Notes

Qualifications of Real Estate Experts — Differing Valuation: At a hearing concerning the valuation and division of property in the dissolution of Maureen and Joseph's marriage, an agricultural real estate broker testified for Maureen that the parties' ranch was worth $398,000 to $400,000, while a certified and licensed property appraiser testified for Joseph that the ranch was worth $182,500. Joseph contended that the District Court erred in accepting the value of the ranch as testified to by the real estate broker because the broker had no experience as a real property appraiser. Citing Jim's Excavating Serv., Inc. v. HKM Associates, 265 M 494, 878 P2d 248 (1994), the Supreme Court held that whether an adequate foundation has been established for the admission of expert testimony is an issue largely within the discretion of the District Court and that the District Court did not abuse its discretion when it relied upon the testimony of the real estate broker. The Supreme Court therefore affirmed the part of the District Court's order that valued the parties' ranch at $400,000. In re Marriage of Ortiz, 282 M 500, 938 P2d 1308, 54 St. Rep. 446 (1997).

Part 1
General

37-54-101. Short title.

Compiler's Comments

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

37-54-102. Definitions.

Compiler's Comments

2017 Amendment: Chapter 55 in definition of appraisal foundation near middle substituted "a not-for-profit corporation" for "an Illinois not-for-profit corporation"; in (7)(a)(ii) after "directly" deleted "on a periodic basis"; and made minor changes in style. Amendment effective March 1, 2017.

Saving Clause: Section 9, Ch. 55, L. 2017, was a saving clause.

Severability: Section 10, Ch. 55, L. 2017, was a severability clause.

2015 Amendment: Chapter 303 inserted definition of real estate appraiser mentor. Amendment effective October 1, 2015.

2011 Amendment: Chapter 270 in first sentence following "Standards of" inserted "Professional"; inserted definitions of appraisal, appraisal management company, appraisal management services, appraisal review, appraiser, appraiser panel, controlling person, person, and quality control examination; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 341 inserted definition of licensed real estate appraisal trainee; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "2-15-1701" for "2-15-1801". Amendment effective July 1, 2001.

1997 Amendment: Chapter 481 inserted first sentence requiring terms to be defined by Uniform Standards of Appraisal Practice; deleted definition of appraisal that read: ""Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in or aspects of identified real estate"; deleted definition of appraisal assignment that read: ""Appraisal assignment" means an appraisal classified by the nature of the assignment as:

(a) a valuation appraisal, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time;

(b) an analysis assignment, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real property; or

(c) a review assignment, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal"; in definition of appraisal foundation, after "1987", inserted cite to Title XI of 1989 Act and in (b), after "criteria", substituted "for the licensure and certification" for "for the certification and recertification"; deleted definition of appraisal report that read: ""Appraisal report" means a written or oral communication of a real estate appraisal. An appraisal report for a federally related transaction must be in writing. An appraisal report may be classified by the nature of the assignment as a "valuation report", an "analysis report", or a "review report". For the purposes of this chapter, testimony of a licensed or certified real estate appraiser dealing with the appraiser's analyses, opinions, or conclusions concerning identified real estate or identified real property is considered an oral appraisal report"; deleted definition of certified appraisal report that read: ""Certified appraisal report" means an appraisal or appraisal report given or signed and certified by a certified real estate appraiser. When identifying an appraisal or appraisal report as "certified", the certified real estate appraiser shall indicate the class of certification the appraiser holds"; deleted definition of independent appraisal service that read: ""Independent appraisal service" means an engagement for which a person is employed or retained to act, or would be perceived by a third party or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property"; deleted definition of real estate that read: ""Real estate" means an identified parcel or tract of land, including any improvements on the land"; deleted definition of real property that read: ""Real property" means one or more defined interests, benefits, and rights inherent in the ownership of real estate"; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Administrative Rules

ARM 24.207.406 Definitions.

Case Notes

Improper Award of Contractual Interest in Case of Negligent Misrepresentation of Real Property Appraisal: A professional appraiser prepared appraisal reports on two properties, which a lender reviewed and relied on in its decision to make loans at 61% to 62% of appraised market value and secured by the appraised properties. When the borrower defaulted, the lender foreclosed. After the Sheriff's sale, a deficiency judgment of $848,067, including $241,333.02 in contractual interest on the note, was entered against the borrower. The lender later sued the appraiser for damages arising from negligent misrepresentation of the appraisals, seeking an additional $620,572 in lost earnings on the deficiency. Under section 552B, Restatement (Second) of Torts, damages recoverable for a negligent misrepresentation are those necessary to compensate the plaintiff for the pecuniary loss of which the misrepresentation is a legal cause, including: (1) the difference between the value of what has been received in the transaction and its purchase price or other value given for it; and (2) pecuniary loss suffered otherwise as a consequence of the plaintiff's reliance on the misrepresentation. Under this rationale, the District Court erred in awarding the contractual interest but properly denied the award for lost earnings. United First Fed. S&L Ass'n v. White-Stevens, Ltd., 253 M 242, 833 P2d 170, 49 St. Rep. 490 (1992).

37-54-105. Powers and duties of board.

Compiler's Comments

2017 Amendment: Chapter 55 in (2)(a) inserted "or renewal of licensure"; in (2)(b) substituted "certification or renewal of a certificate" for "certification and renewal of a license or certificate"; inserted (2)(c) regarding registration or renewal of registration of appraisal management companies; in (5) after "certification" inserted "or appraisal management company registration", after "issue" inserted "or, as appropriate, renew", and after "certificates" inserted "or appraisal management company registrations"; in (7) substituted "the board" for "it"; inserted (9)(a) and (9)(b) regarding submissions by appraisal management company to board and examination of books and records of appraisal management company; in (10) after "certificate" inserted "or registration" and after "person" inserted "or entity"; inserted (12) regarding collection and transmission of annual registry fees from registered appraisal management companies and federally regulated appraisal management companies; and made minor changes in style. Amendment effective March 1, 2017.

Saving Clause: Section 9, Ch. 55, L. 2017, was a saving clause.

Severability: Section 10, Ch. 55, L. 2017, was a severability clause.

2015 Amendment: Chapter 303 inserted (10) concerning real estate appraiser mentors; and made minor changes in style. Amendment effective October 1, 2015.

2011 Amendment: Chapter 270 in (9) following "appraisers" inserted "or registered appraisal management companies". Amendment effective October 1, 2011.

2003 Amendment: Chapter 196 in (2) after "costs of" inserted "processing an application for"; and at beginning of (4) substituted "prescribe the examinations for licensure or certification" for "receive applications for examination from qualified applicants, prescribe and administer examinations to qualified applicants". Amendment effective October 1, 2003.

1997 Amendment: Chapter 481 in list of Board duties deleted former (3) that required Board to "make available application forms for licensure and certification within 15 days of the first meeting of the board"; deleted former (9) and (10) that required Board to "maintain a registry of the names and addresses of licensees and certificate holders" and "establish disciplinary procedures for reprimand, suspension, or revocation of a license and certificate"; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment: Chapter 429 deleted former (13) that read: "(13) establish criteria for courses and seminars consistent with the continuing education requirements set out in 37-54-210 and 37-54-310"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Administrative Rules

Title 24, chapter 207, subchapter 1, ARM Organizational rule.
Title 24, chapter 207, subchapter 2, ARM Procedural rules.
Title 24, chapter 207, subchapter 5, ARM Licensing and scope of practice.
ARM 24.207.1501 Registration and renewal of appraisal management companies.
ARM 24.207.1504 Appraiser panel list for appraisal management companies.
ARM 24.207.1507 Appraisal management company recordkeeping.

37-54-111. Certificate of good standing.

Compiler's Comments

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

37-54-112. Deposit of fees.

Compiler's Comments

2017 Amendment: Chapter 55 at beginning inserted exception clause; and made minor changes in style. Amendment effective March 1, 2017.

Saving Clause: Section 9, Ch. 55, L. 2017, was a saving clause.

Severability: Section 10, Ch. 55, L. 2017, was a severability clause.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Administrative Rules

ARM 24.207.401 Fees.

37-54-113. Registry fees — statutory appropriation.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 8, L. 2023, repealed sec. 12, Ch. 55, L. 2017, which terminated this section June 30, 2023. Effective February 16, 2023.

Effective Date: Section 11, Ch. 55, L. 2017, provided: "[This act] is effective on passage and approval." Approved March 1, 2017.

Termination: Section 12, Ch. 55, L. 2017, provided: "[Section 2] [37-54-113] terminates June 30, 2023."

Saving Clause: Section 9, Ch. 55, L. 2017, was a saving clause.

Severability: Section 10, Ch. 55, L. 2017, was a severability clause.

Part 2
Licensure

37-54-201. Real estate appraiser license — scope and display of license.

Compiler's Comments

2003 Amendment: Chapter 196 near middle of (1) after "37-54-202" deleted "and upon payment of license fees adopted under 37-54-105"; in (3) near middle of second sentence deleted reference to 37-54-304; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 481 in first sentence in (3), after "property", substituted "for transactions not related to a federal agency or project" for "for nonfederally related transactions"; in (5), near beginning after "licensed", inserted "or certified"; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Administrative Rules

ARM 24.207.401 Fees.

37-54-202. Qualifications for licensure.

Compiler's Comments

2015 Amendment: Chapter 303 in (2)(c) substituted "real estate appraiser mentor" for "certified real estate appraiser"; inserted (3) concerning fingerprinting; and inserted (4) concerning criminal convictions and rehabilitation. Amendment effective October 1, 2015.

2003 Amendment: Chapter 341 inserted (2) providing qualifications for licensure of real estate appraisal trainees; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 481 substituted (1) through (4) outlining appraiser qualifications for former (1) through (4) that read: "(1) shall successfully complete at least 75 classroom hours of a course of study described in 37-54-203 and approved by the board.

(a) The course of study must be conducted by:

(i) an accredited university, college, or junior college;

(ii) an approved real estate appraisal or real estate-related organization; or

(iii) another school approved by the board.

(b) The classroom hours must include:

(i) at least 60 hours relating to the basic principles of land economics and real estate appraisal; and

(ii) at least 15 hours relating to the standards of professional appraisal practice set out in 37-54-403 and the ethical rules, as established by board rule, to be observed by a real estate appraiser.

(2) shall pass an examination administered by the board that is based on the study required by 37-54-203 and subsection (1) of this section and is designed to test the applicant's knowledge of the basic principles of land economics and real estate appraisal, standards of professional appraisal practice, and ethical rules to be observed by a real estate appraiser;

(3) must be of good moral character;

(4) must have experience in real estate appraisal as prescribed by the board. The board shall adopt rules pertaining to real estate appraisal experience that substantially comply with and are not more stringent than those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989"; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Federal Citation: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 referred to in this section is codified at 12 U.S.C. 1833, et seq.

Administrative Rules

Title 24, chapter 207, subchapter 5, ARM Licensing and scope of practice.

37-54-212. Temporary registration of certification and licensure of out-of-state appraisers.

Compiler's Comments

Effective Date: Section 77(2), Ch. 492, L. 2001, provided that this section is effective October 1, 2001.

Part 3
Certification

37-54-301. Certification — use of term — standards of practice.

Compiler's Comments

1997 Amendment: Chapter 481 inserted (4) concerning indication of certification in writing on report; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

37-54-302. Certification process — fees.

Compiler's Comments

2015 Amendment: Chapter 303 inserted (4)(c) concerning experience; inserted (6) concerning fingerprinting; inserted (7) concerning criminal convictions and rehabilitation; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 196 in (1) near beginning after "application" deleted "for examination". Amendment effective October 1, 2003.

1995 Amendment: Chapter 429 made minor changes in style.

Code Commissioner Correction: In (3), the Code Commissioner substituted 37-1-308 for 37-54-402 pursuant to the authority contained in sec. 73, Ch. 18, L. 1995.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Administrative Rules

ARM 24.207.401 Fees.
ARM 24.207.504 Qualifying education requirements.

37-54-303. Classes of certification — education and experience requirements.

Compiler's Comments

1993 Amendment: Chapter 81 deleted former (1)(b) that read: "agricultural/rural lands, which relates to the appraisal of agricultural and rural lands, including timberlands"; and made minor changes in style. Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Administrative Rules

ARM 24.207.508 Ad valorem tax appraisal experience.
ARM 24.207.509 Qualifying experience.

37-54-305. Issuance and display of certificate.

Compiler's Comments

2003 Amendment: Chapter 196 at end of (1) deleted reference to 37-54-304. Amendment effective October 1, 2003.

1997 Amendment: Chapter 481 in (4), near end, substituted "that the appraiser uses" for "used by him"; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

37-54-310. Renewal of certificate.

Compiler's Comments

1995 Amendment: Chapter 429 in (1), at end, substituted "expires on the date set by department rule" for "expires on March 31 following the date of issuance or renewal and is invalid thereafter"; in (2), after "fee", inserted "and by meeting all requirements for renewal"; deleted former (3) that read: "(3) (a) The certificate holder shall produce evidence satisfactory to the board that during the 3-year period immediately following the date of issuance of the certificate, and during each 3-year period thereafter, the certified real estate appraiser has:

(i) completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards of professional appraisal practice;

(ii) completed an education program determined by the board to be equivalent to the courses and seminars approved under subsection (3)(a)(i); or

(iii) participated, other than as a student, in an education program approved by the board that relates to the theory and technique of real property appraisal.

(b) Continuing education hours must be credited to the 3-year period during which the instruction occurred and may not be carried over to a subsequent 3-year period"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 81 in (1), at end, substituted "expires on March 31 following the date of issuance or renewal and is invalid thereafter" for "must be renewed every 3 years"; in (3)(a), before "period", substituted "3-year" for "certification" and after "immediately" substituted "following the date of issuance of the certificate, and during each 3-year period thereafter" for "preceding the application for renewal"; in (3)(a)(ii) substituted "subsection (3)(a)(i)" for "subsection (2)(a)"; inserted (3)(b) disallowing carryover of continuing education hours; and made minor changes in style. Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Administrative Rules

ARM 24.207.401 Fees.
ARM 24.207.2101 Continuing education.

Part 4
Regulation of Practice

37-54-403. Standards of professional appraisal practice.

Compiler's Comments

1999 Amendment: Chapter 230 inserted second sentence in (1) requiring appraiser to comply with standards regardless of whether transaction federally related or capable of performance by unlicensed person; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 81 in (2), near end of first sentence after "appraisers", substituted "the modification is automatically adopted as observable in this state unless the board determines that a public hearing is necessary" for "and requests the board to consider the adoption of the modifications or supplements, the board shall conduct a public hearing". Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

37-54-411. Classification of services.

Compiler's Comments

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

37-54-412. Collection of appraisal fees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

37-54-415. Place of business.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

37-54-416. Retention of records.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Effective Date: Section 31, Ch. 409, L. 1991, provided that this section is effective on passage and approval. Approved April 9, 1991.

Part 5
Appraisal Management Companies

Part Compiler's Comments

Effective Date: This part is effective October 1, 2011.

37-54-503. Owner requirements.

Compiler's Comments

2017 Amendment: Chapter 55 in (1) and (1)(b) before "owned by" deleted "more than 10%"; in (2) in first sentence after "owns" deleted "more than 10% of"; in (3) substituted current text for former (3) that read: "Each appraisal management company applying for registration in this state shall certify to the board that it has reviewed each entity that directly owns more than 10% of the appraisal management company and that no entity that directly owns more than 10% of the appraisal management company is more than 10% directly owned by any person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state"; and made minor changes in style. Amendment effective March 1, 2017.

Saving Clause: Section 9, Ch. 55, L. 2017, was a saving clause.

Severability: Section 10, Ch. 55, L. 2017, was a severability clause.

37-54-508. Limitations.

Compiler's Comments

2015 Amendment: Chapter 303 inserted (2) concerning restrictions on licensed real estate appraisal trainee; inserted (3) concerning transfer of appraisal assignment; and made minor changes in style. Amendment effective October 1, 2015.

37-54-511. Certification — adherence to standards.

Compiler's Comments

2017 Amendment: Chapter 55 near end after "performing appraisals for the appraisal management company" deleted "on a periodic basis". Amendment effective March 1, 2017.

Saving Clause: Section 9, Ch. 55, L. 2017, was a saving clause.

Severability: Section 10, Ch. 55, L. 2017, was a severability clause.

37-54-518. Advertising.

Compiler's Comments

2015 Amendment: Chapter 303 in (2) deleted former first sentence that read: "An appraiser who completes work for an unregistered or suspended appraisal management company is subject to disciplinary action for unprofessional conduct." Amendment effective October 1, 2015.

CHAPTER 56
PROPERTY MANAGERS

Administrative Rules

Title 24, chapter 209, ARM property management licensure.

Part 1
General

Part Compiler's Comments

Effective Date: This part is effective October 1, 2023.

37-56-104. Exemptions from requirement of property manager license.

Compiler's Comments

2023 Enactment — Coordination: The enactment of this section by sec. 4, Ch. 482, L. 2023, was replaced by sec. 2, Ch. 609, L. 2023, a coordination section.

CHAPTER 60
PRIVATE INVESTIGATORS, PRIVATE SECURITY AND FIRE ENTITIES, AND PROCESS SERVERS

Chapter Compiler's Comments

Preamble: The preamble to Ch. 63, L. 1987, which amended numerous sections of this chapter and repealed 37-60-305 and 37-60-306, provided: "WHEREAS, it is the intent of this bill to provide for effective enforcement of licensure laws by removing certain exemptions, to clarify violations, and to provide the licensing board with the means to impose penalties or cause prosecution for violations of licensure laws."

Part 1
General

Part Compiler's Comments

Application of Act to Existing Businesses: Section 32, Ch. 550, L. 1983, provided: "A person engaged in the business of a contract security company, a proprietary security organization, or a private investigator within this state on October 1, 1983, shall within 6 months of that date apply to the board for a license to operate such business. Any person filing a timely application for a license may continue to engage in business pending a final determination upon the application by the board."

37-60-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2011 Amendment: Chapter 100 in definition of electronic security company in (a) near beginning inserted "sells"; in definition of resident manager near middle after "operation of each" deleted "branch"; and in definition of security alarm installer in (a) inserted "sells". Amendment effective October 1, 2011.

2009 Amendment: Chapter 194 deleted former definition of fire investigator that read: ""Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:

(i) makes or agrees to make an investigation with reference to:

(A) a fire to identify evidence and determine the cause of the fire; or

(B) accidents involving suspected negligence or arson for criminal or civil action;

(ii) testifies as an expert witness for investigations identified under this subsection (12); or

(iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.

(b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:

(i) a fire department as described in 7-3-1345;

(ii) law enforcement; or

(iii) an entity organized under Title 7, chapter 33"; in definition of private investigator in (d) after "responsibility for" inserted "fires"; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendments — Composite Section: Chapter 405 inserted definition of process server; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 502 inserted definitions of armed, electronic security company, fire investigator, firearms course, firearms instructor, security alarm installer, and security company; deleted definition of qualifying agent that read: ""Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable"; in definition of alarm response runner after "employed by" inserted "an electronic security company"; in definition of armed carrier service near beginning after "person" inserted "or security company"; in definition of armed private investigator after "possesses" deleted "or has access to"; in definition of armed private security guard near middle after "carrier service guard" deleted "or alarm response runner"; in definition of armored car service near beginning after "person" inserted "or security company"; in definition of board after "security" deleted "patrol officers and investigators"; in definition of contract security company near beginning after "who" deleted "installs or maintains a security alarm system"; in definition of insurance adjuster near end after "crimes" deleted "or wrongs committed or threatened"; in definition of private investigator in (a) after "crimes" deleted "or wrongs done or threatened", in (d) after "for" deleted "fires", and in (e) at beginning substituted "gathering" for "securing"; in definition of security alarm system in (a) near middle after "device" substituted "or a portion of a system intended" for "such as a solid state unit that plugs directly into a 110-volt AC line, designed" and at end after "at a" substituted "location" for "protected premises and to which signals police, private security guards, or alarm response runners are expected to respond" and in (b) near beginning after "include" deleted "alarm systems and alarm" and at end substituted "location" for "premises"; in definition of street patrol service substituted present definition for former definition that read: ""Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares"; in definition of unarmed private investigator after "possess" deleted "or have access to"; in definition of unarmed private security guard near end after "carry" inserted "or possess"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "2-15-1701" for "2-15-1801"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In definition of paralegal substituted "one or more lawyers, law offices" for "a lawyer, law office", "agencies" for "agency", and "entities" for "entity". Amendment effective February 24, 1991.

Preamble: The preamble attached to Ch. 47, L. 1991, provided: "WHEREAS, section 2, Chapter 332, Laws of 1989, exempted "a legal intern, paralegal, or legal assistant employed by a licensed attorney" from licensure as a private investigator; and

WHEREAS, the Board of Private Security Patrol Officers and Investigators, in Rule 8.50.423, Administrative Rules of Montana, interpreted the license exemption for paralegals to apply to "a paralegal employed by only one law firm" and required that paralegals "employed by more than one firm at the same time" be licensed as private investigators; and

WHEREAS, the Legislature intended the 1989 law, by use of the singular phrase "employed by a licensed attorney", to include the plural, in conformity with the basic rule of statutory construction set out in section 1-2-105, MCA, and now finds it necessary to clarify the licensing exemption with regard to paralegals."

1989 Amendments: Chapter 83 substituted "resident manager" for "resident agent" as defined term.

Chapter 217 in definition of Board changed "patrolmen" to "patrol officers".

Chapter 332 inserted definition of paralegal or legal assistant.

1987 Amendment: In (4), near middle, substituted reference to "duty or any portion of whose duty" for "principal duty" and near end deleted "possesses, or has access to" before "a firearm"; in (14), near beginning, inserted "or assigned duties" and near middle inserted "or any portion of whose duties"; inserted definition of resident agent; in (21) substituted reference to "duty or any portion of whose duty" for "principal duty" and near end deleted "possesses, or have access to" before "a firearm"; and made minor changes in phraseology.

1985 Amendment: At end of (1) deleted last sentence that read: "A person whose sole function is to maintain or repair a security alarm system is not included within the meaning of this definition"; in (8) near beginning, after "who", inserted "installs or maintains a security alarm system"; and in (10), near beginning substituted "conducts investigations" for "conducts any of the investigations enumerated in subsection (13)" and near end, after "surveillance activities", inserted remainder of subsection.

1983 Amendment: Inserted definitions of alarm response runner, armed carrier service, armed private investigator, armed private security guard, armored car service, Board, branch office, contract security company, insurance adjuster, private investigator, private security guard, proprietary security organization, qualifying agent, security alarm system, street patrol service, unarmed private investigator, and unarmed private security guard; deleted former (2), which read: "Director means the director of the department of commerce or his designee", and former (4), which read: "Manager means the individual under whose direction, control, charge, or management the business of a licensee is operated"; in (9) after "department of commerce" inserted "provided for in 2-15-1801"; and in (11) after "chapter" deleted "and includes but is not limited to private investigator and private patrol operator".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1); substituted "director of the department of commerce or his designee" for "director of the department of professional and occupational licensing" in (2).

Administrative Rules

ARM 24.182.301 Definitions.

37-60-103. Purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 194 near middle and near end after "firearms instructors" deleted "fire investigators"; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendments — Composite Section: Chapter 405 in two places after "investigators" inserted reference to process servers; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 502 near middle after "performance of" substituted "security companies and their employees who are required to be licensed, firearms instructors, fire investigators" for "private security personnel" and near end after "committed by" substituted "security companies and their licensed employees, firearms instructors, fire investigators" for "private security personnel"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1983 Amendment: Rewrote section (see 1983 Session Law). Text formerly read: "A private patrol operator or operator of a private patrol service within the meaning of this chapter is a person who, for any consideration whatsoever:

(1) agrees to furnish or furnishes a watchman, guard, patrolman, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or

(2) performs the service of such watchman, guard, patrolman, or other person for any of said purposes."

Administrative Rules

ARM 24.182.301 Definitions.

37-60-104. Restrictions on private security firms.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: At beginning of section substituted "No employee of a contract security company or proprietary security organization may" for "A person licensed as a private patrol operator only may not"; and after "other thing" deleted "enumerated in 37-60-103".

37-60-105. Exemptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 38 inserted (1)(o) including certified public accountants; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 194 inserted (1)(k) concerning the collection and examination of physical material for forensic purposes; inserted (1)(n) concerning personnel and human resource issues; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment: Chapter 405 in (1) at beginning inserted exception clause; inserted (2) providing that persons listed as exempt are not exempt for purposes of acting as registered process servers and providing that exception does not apply to attorneys or persons making 10 or fewer services of process in calendar year; and made minor changes in style. Amendment effective July 1, 2007.

1991 Amendment: In (4)(b) substituted "one or more lawyers, law offices, governmental agencies, or other entities" for "a licensed attorney". Amendment effective February 24, 1991.

Preamble: The preamble attached to Ch. 47, L. 1991, provided: "WHEREAS, section 2, Chapter 332, Laws of 1989, exempted "a legal intern, paralegal, or legal assistant employed by a licensed attorney" from licensure as a private investigator; and

WHEREAS, the Board of Private Security Patrol Officers and Investigators, in Rule 8.50.423, Administrative Rules of Montana, interpreted the license exemption for paralegals to apply to "a paralegal employed by only one law firm" and required that paralegals "employed by more than one firm at the same time" be licensed as private investigators; and

WHEREAS, the Legislature intended the 1989 law, by use of the singular phrase "employed by a licensed attorney", to include the plural, in conformity with the basic rule of statutory construction set out in section 1-2-105, MCA, and now finds it necessary to clarify the licensing exemption with regard to paralegals."

1989 Amendment: In (4)(b) inserted "paralegal, or legal assistant"; inserted (4)(c) that read: "(c) a law student who is serving a legal internship"; and made minor changes in phraseology and punctuation.

1987 Amendment: Inserted (1)(b) exempting retail private security guards; in (4) substituted "legal intern employed by a licensed attorney" for "a paralegal or legal assistant employed by an attorney at law or a law student who is serving a legal internship"; and in (9), at end, inserted "and regularly" before "employed".

1985 Amendment: At end of (1) substituted "and is guarding inside a structure which at the time is not open to the public" for "and has little contact with the public"; deleted former (4) that read: "a charitable, philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit"; in (4) after "performing his duties as such attorney at law", inserted remainder of subsection; and inserted (9) exempting internal investigator or auditor.

1983 Amendment: In (1) substituted language exempting a person who works exclusively for one employer and who is unarmed, does not wear a uniform, and has little public contact for former text that read: "a person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship"; in (3), inserted final phrase beginning "or as to the personal habits..."; in (6) after "collection agency" inserted "or finance company licensed to do business under the laws of this state" and after "agency" inserted "or company"; inserted (7) exempting railroad special agents; and inserted (9) exempting insurance adjuster.

Administrative Rules

ARM 24.182.301 Definitions.

Attorney General's Opinions

Private Patrol Operator License Requirements Inapplicable to Reserve Officers: The provision of 37-60-105 that exempts officers engaged in the performance of their official duties from the licensing requirements of the private investigators and private patrol operators licensing law applies to reserve officers as defined in 7-32-201, regardless of the source of any income they may receive when they are serving on the orders and at the direction of the chief law enforcement administrator of the local government. 38 A.G. Op. 58 (1979).

Part 2
Rulemaking

37-60-202. Rulemaking power.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2011 Amendment: Chapter 100 deleted former (7) that read: "(7) requiring the maintenance of records"; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendments — Composite Section: Chapter 405 in (1) after "cards" inserted "and process servers" and inserted reference to Title 25, chapter 1, part 11; in (8) inserted "except process servers"; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 502 in (1) after "managers" deleted "qualifying agents"; in (2) after "original" deleted "or renewal"; in (3) at beginning substituted "requiring approval of the board prior to" for "prohibiting" and after "licensee" deleted "except a proprietary security organization, without approval by the board"; in (4) after "guard" inserted "security alarm installer, and alarm response runner"; in (9) after "investigators" inserted "and security alarm installers"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendment: Chapter 126 deleted former (1) that read: "(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license or identification card"; in (2) after "application" deleted "and examination"; in (3)(b) at end substituted "branch offices identified in subsection (3)(a)" for "those offices"; in (4) at end after "programs" deleted "and firearms instructors"; inserted (5) requiring rules related to the licensure of firearms instructors; in (8) near middle after "policy" deleted "or proof of financial responsibility as the board considers necessary"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 deleted (9) requiring Board to adopt rules defining unprofessional conduct for the purposes of removal from the Board and suspension or revocation of licenses and identification cards; deleted (10) requiring rules establishing the expiration and renewal periods for licenses and identification cards; deleted (11) requiring rules for the temporary employment of persons without the required licenses or identification cards; deleted (12) requiring rules providing for the issuance of probationary and temporary licenses for contract security companies and private investigators; deleted (14) requiring rules providing for the application of administrative fines and penalties for minor infractions of this chapter and supporting rules; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1987 Amendment: In lead-in deleted "reasonable" before "rules"; in (1), (3), (9), and (10) deleted reference to registration after reference to license; in (2) deleted "registrants" after "licensees"; in (8) substituted "file such insurance or proof of financial responsibility as the board considers necessary with the board" for "maintain such insurance coverage as the board considers necessary"; in (11) substituted "licenses" for "registration"; in (13) deleted "registration and" after "probationary"; and inserted (14) concerning fines and penalties.

1987 Statement of Intent: The statement of intent attached to Ch. 63, L. 1987, which amended this section, provided: "A statement of intent is required for this bill because in section 3 [37-60-202] it expands the authority of the board of private security patrolmen and investigators to provide for the application of administrative fines and penalties for minor infractions of Title 37, chapter 60, and the supporting rules.

It is the intent of the legislature that the board adopt rules that conform with chapter 60 and other applicable statutes. Administrative fines and penalties for minor infractions of the chapter or of the board's rules must be commensurate with the gravity of the infraction, and the board may not suspend or revoke a license granted under this chapter except upon indisputable evidence of violation of this chapter, other applicable statutes, or the board's rules."

1985 Amendment: Inserted (12) referring to issuance of probationary and temporary licenses; and inserted (13) referring to issuance of probationary identification cards.

1983 Amendment: In lead-in changed "the director may" to "the board shall"; in (1) substituted language directing the Board to adopt and enforce rules relating to the form and procedure for granting, denying, suspending, or revoking any license, registration, or identification card for former text that read: "classifying licensees according to the type of business regulated by this chapter in which they are engaged, including but not limited to private investigators and private patrol operators, and limiting the field and scope of the operations of a licensee to those in which he is classified and qualified to engage"; in (2) before "licensees" inserted "resident managers, qualifying agents" and after "licensees" inserted "registrants, and holders of identification cards"; in (3) substituted language directing the Board to establish various licensing fees for former text that read: "carrying out generally the provisions of this chapter"; and inserted (4) through (10) requiring Board to adopt and enforce rules to prohibit establishment of branch offices, provide for certification of training programs, provide for approval of weapons, require maintenance of records, require filing of insurance policy or proof of financial responsibility, define unprofessional conduct, and establish expiration and renewal periods.

1983 Statement of Intent: The statement of intent attached to Ch. 550, L. 1983, provided: "A statement of intent is required for this bill because section 7 [37-60-202] requires the board to adopt administrative rules.

Subsection (1) of 37-60-202 requires the board to adopt rules specifying the form of various documents granted by the board and the method of taking various licensing actions on the same. The minimum standards for the documents are set out in section 37-60-309 [now repealed] but may include such other matters of identification, such as fingerprints, as the board determines to be necessary. The procedures and standards for suspension and revocation of a license, registration, or identification card are set out in 37-60-321 [now repealed]. This section facially allows the board to suspend or revoke the registration of an individual for violations by his licensed employee or vice versa. As to those situations involving the suspension or revocation of the document of one party for the actions by another, it is the Legislature's intent that the board rules governing this matter should only require or allow the suspension or revocation of a document issued by the board if the person or entity whose document is in jeopardy had the right of control over the person or entity whose actions put the document in jeopardy and if the person whose document is in jeopardy knew or should have known of the actions of that other person.

Subsection (4) of 37-60-202 also requires the board to adopt rules prohibiting the establishment of certain branch offices without approval by the board and establishing requirements for board approval. The qualifications that may be required by the board under this subsection may not apply to proprietary security organizations, and may concern such matters as the supervision and management of the office but must not prescribe requirements for office size, equipment, etc.

Subsection (5) requires the adoption of training program rules. It is the intention of the Legislature that these rules specify a minimum curriculum and minimum standards for instructors used in all phases of the program, including firearms instructors.

Board rules adopted under subsection (8) relating to insurance may not require schools to carry insurance to protect themselves against civil liability for negligent or inadequate training incurred after students graduate from the training program.

Board rules defining "unprofessional conduct" under subsection (9) may include only that conduct which has a direct relationship to the ability of the board member or the licensee, registrant, or identification cardholder to perform official duties or acts taken in the capacity of a licensee, registrant, or cardholder.

Under subsection (11), the board must adopt rules which, at a minimum, provide for a maximum period of time in which employees may be considered to be "on probation" with an employer and for that period only, excused from the requirements for identification or registration cards which would otherwise apply."

Part 3
Licensing

Part Administrative Rules

Title 24, chapter 182, subchapter 5, ARM Licensure requirements.

37-60-301. Private security license required — process server registration required — armed endorsement.

Compiler's Comments

2023 Amendments — Composite Section: Section 4, Ch. 366, L. 2023, deleted former (4) that read: "(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411." Amendment effective October 1, 2023.

Section 8, Ch. 481, L. 2023, in (1) at beginning substituted "Unless licensed under Title 37, chapter 1, and this chapter, a person may not practice as" for "Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company, a proprietary security organization"; inserted (1)(a) regarding private security firm; in (1)(b) substituted "security firm" for "security company, a branch office"; in (1)(d) after "alarm installer" deleted "an alarm response runner, a resident manager"; in (1)(e) at beginning substituted "a private security firearms instructor" for "a certified firearms instructor"; in (1)(f) after "security guard" deleted "without having first obtained a license from the board"; in (2) after exception clause substituted current text regarding registered process server registration issued by department for "it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board"; inserted (3) regarding possession of firearms and maintaining endorsement; in (4) at end substituted "person is licensed, registered, or endorsed as any of the license types listed in subsections (1) through (3)" for "person is licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard"; deleted former (4) (see Ch. 366 note); and made minor changes in style. Amendment effective October 1, 2023.

2009 Amendment: Chapter 194 in (1)(a) near middle, in (2) near middle, and in (4) near middle after "private investigator" deleted reference to fire investigator; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendments — Composite Section: Chapter 405 in (1)(a) deleted former second sentence that read: "Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department"; inserted (1)(b) providing that except as provided in 25-1-1101(2), it is unlawful for person to act or perform duties of process server for more than 10 services in calendar year without being issued certificate of registration; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 502 in (1) near beginning after "37-60-105" deleted "and 37-60-315", after "security organization" inserted "an electronic security company, a branch office", and after "investigator" inserted "a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor" and deleted former second sentence that read: "Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department"; in (2) near middle after "licensed as" deleted "a private investigator" and after "organization" inserted "an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor"; in (4) after "unlicensed" deleted "private investigator, private security guard, or" and after "contract security company" inserted "proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1997 Amendments: Chapter 360 in (1), near beginning of first sentence after "37-60-105", inserted "and 37-60-315"; and made minor changes in style. Amendment effective April 22, 1997.

Chapter 480 inserted (3) regarding confidential intermediary.

Severability: Section 172, Ch. 480, L. 1997, was a severability clause.

Applicability: Section 173, Ch. 480, L. 1997, provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 7, and Title 52, chapter 8, part 1] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

1995 Amendment: Chapter 429 at end of (1) substituted "department" for "board"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1987 Amendment: In (1) inserted "or perform the duties as defined in 37-60-101 of", after "private investigator" deleted "within this state", and inserted "or a private security guard"; inserted (2) providing that it is unlawful for an unlicensed person to act as a licensee; and inserted (3) providing that it is a misdemeanor to engage an unlicensed person.

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text that read: "No person shall engage in a business regulated by this chapter unless he is licensed under this chapter, and no person shall falsely represent that he is employed by a licensee."

Administrative Rules

Title 24, chapter 182, subchapter 4, ARM General provisions.

37-60-303. Private security services licensure qualifications — fingerprinting — insurance.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 161 in (1)(d) substituted “mental disease or disorder” for “mental defect or disease”; and made minor changes in style. Amendment effective April 1, 2015.

2011 Amendment: Chapter 100 in (1) after “submit evidence” deleted “under oath”; and in (2)(a) near middle substituted “department” for “board”. Amendment effective October 1, 2011.

2007 Amendments — Composite Section: Chapter 405 in (1) and (6) substituted “subsection (7)(a)” for “subsection (7)”; in (1) after “chapter” inserted “or an applicant for registration as a process server under this chapter”; in (5) after “applicant” inserted “for a license as a private security patrol officer or private investigator”; in (6) after “licensure” inserted “or registration”; in (7)(a) and (7)(b) at end inserted “or, if doing business as a process server, must be registered by the board”; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 502 in (1) in introductory clause substituted “(7)(a)” for “(7)”; in (1)(b) at end inserted “or a legal, permanent resident of the United States”; in (2) at end of introductory clause inserted “security alarm installer, or alarm response runner”; in (2)(a) near beginning after “complete the” deleted “training” and before “training program” deleted “private security guard”; in (5) after “carry” inserted “or possess”; in (6) in exception clause substituted “(7)(a)” for “(7)”; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendment: Chapter 126 deleted former (3)(d) that read: “(d) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government”; in (4) substituted language allowing written examination of additional qualifications for former language that read: “Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript”; deleted former (6) that read: “(6) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require”; deleted former (8)(b) that read: “(b) The board shall establish by rule the license application procedure and application fee for business entities described in subsection (8)(a)”; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 375 in (1) in introductory clause after “Except as” substituted reference to subsection (8) for “otherwise specified in this section” and after “chapter” inserted reference to this section; deleted former (6) that read: “(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state”; in (6) after “board” substituted “may” for “shall”; inserted (7) requiring fingerprint checks for license applicants; inserted (8) relating to license application requirements for applicants other than individuals; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1997 Amendment: Chapter 481 deleted qualification in (3)(e) that applicant “has completed the training requirements of a private investigator training program certified by the board and furnished, on a form prescribed by the board, written notice of satisfactory completion of such training”; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1987 Amendment: In (1), at beginning, substituted “Except as otherwise specified in this section, an applicant for licensure under this chapter” for “An applicant for a license to act as a contract security company or a proprietary security organization”; inserted (2) providing additional licensure requirements for private security guards; in (3), at beginning, substituted “In addition to meeting the qualifications in subsection (1), each” for “Every”; deleted former (a), (d), and (f) containing requirements of submitting evidence that an applicant is a U.S. citizen, has not been convicted of a felony or an offense involving moral turpitude, and is of good moral character; inserted (e) and (f) requiring an applicant to complete a training program and to fulfill other Board-prescribed requirements; inserted (5) requiring applicants who use firearms to complete a training program; and corrected internal references.

1985 Amendment: In (2)(b) substituted “21 years” for “25 years”; deleted former (2)(d) that read: “is a resident of this state”; deleted former (2)(h)(iv) that read: “has been graduated from an accredited university or college with a degree in police administration”; and inserted (3) allowing applicant to meet one-half of experience requirement of (2)(g) by combination of experience and training approved by the Board.

1983 Amendment: Substituted (1) stating license requirements for contract security company and proprietary security organization, (2) stating license requirements for private investigator, (3) requiring corporate applicant to be incorporated in this state, and (4) requiring Board to require applicant to take written examination for former (1) through (8), which read: "An application shall be verified and shall include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification or classifications under which the applicant desires to be qualified;

(5) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager;

(6) two recent photographs of the applicant, of a type prescribed by the director, and two classifiable sets of his fingerprints;

(7) a verified statement of his experience qualifications; and

(8) such other information, evidence, statements, or documents as may be required by the director."

Administrative Rules

ARM 24.182.301 Definitions.
ARM 24.182.505 Written examination.
ARM 24.182.801 Curriculum and standards for firearms training courses.

37-60-304. Application form and content.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 194 in (2)(d) after "private investigator" deleted "a fire investigator"; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendments — Composite Section: Chapter 405 in (1) at beginning deleted "Except as provided in 37-60-303(7)" and after "license" inserted "or for a certificate of registration as a process server"; in (2)(d) at end inserted "or registered as a process server"; in (3) at end inserted "other than an applicant under 37-60-303(7)(a)" (amendment rendered void by Ch. 502 amendment); in (4) after "license" inserted "or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a)"; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 502 in (1) at beginning deleted "Except as provided in 37-60-303(7)"; in (2)(d) after "organization" inserted "an electronic security company, a branch office, a certified firearms instructor" and after "private investigator" inserted "a fire investigator, a security alarm installer, an alarm response runner, a resident manager"; in (2)(e) at beginning inserted exception clause; in (2)(f) at end inserted exception clause; in (3) at end deleted "and the applicant's moral character"; in (4) near middle inserted exception clause (amendment rendered void by Ch. 405 amendment); and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendments — Composite Section: Chapter 126 in (1) near beginning substituted "37-60-303(7)" for "37-60-303(8)" and after "must be" substituted "submitted to the department" for "made on a form prescribed by the board"; in (2)(e) after "prescribed by the" substituted "department, and one classifiable set" for "board, and two classifiable sets"; deleted former (5) that read: "(5) The board shall send written notification to the chief of police, sheriff, and county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 467 in (1) near middle after "made on" substituted "an approved form" for "a form prescribed by the board" (amendment in (1) rendered void by Ch. 126 amendment); and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 375 in (1) inserted exception clause; in (2)(e) reduced number of required photographs from two to one; deleted former (2)(h) that read: "(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager"; inserted (4) requiring submission of fingerprints; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1987 Amendment: In (2)(d) inserted "or a private security guard"; in (2)(f) inserted "age and"; and made minor changes in phraseology.

1985 Amendment: In (2)(h) after "and its manager", deleted "and, if the applicant is a corporation, a certified copy of its certificate of incorporation or certificate of authority issued by the secretary of state"; and in (3), at beginning of second sentence substituted "The board shall send written notification to" for "The board shall send a copy of the application to" and at end inserted "that an application has been submitted".

1983 Amendment: Substituted (1) through (3), relating to application form, content, and Board verification and requiring Board to send copy to local law enforcement agencies in jurisdiction where applicant's principal office is to be located, for former (1) through (4), which read: "Before a license is granted, the applicant or his manager shall meet all of the following:

(1) be at least 18 years of age;
(2) be a citizen of the United States and a resident of the state of Montana;
(3) be of good moral character and temperate habits; and
(4) comply with such other qualifications concerning training, education, or experience as the director may fix by rule."

Administrative Rules

ARM 24.182.501 Required information for application.

37-60-310. Display of license and identification card.

Compiler's Comments

2007 Amendment: Chapter 502 in (2) in first sentence after "card" deleted "or a temporary identification card". Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1997 Amendment: Chapter 360 in (2), in first sentence after "identification card", inserted "or a temporary identification card" and after "carry the card" deleted "on his person"; and made minor changes in style. Amendment effective April 22, 1997.

1987 Amendment: In (2), at beginning of first sentence, deleted "registrant or" after "Any" and at end of sentence deleted "and while going to and from work".

1983 Amendment: Inserted (2) requiring registrant and holder of identification card to carry it on his person at certain times and allowing a peace officer to request to see it at any reasonable time.

Administrative Rules

ARM 24.182.507 Temporary permit.

37-60-314. Nontransferability of license — record changes.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2007 Amendment: Chapter 502 in (2) in first sentence after "directors" inserted "name, address, employment"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1983 Amendment: Substituted language of (1) prohibiting license from being transferred, (2) requiring licensee notice of any material change in information furnished or required to be furnished or other circumstance that may affect right to license, and (3) providing that section may not be applied to affect certain sales of a business for former text that read: "A licensee shall notify the department of any and all changes of his address, of the name under which he does business, and of any change in its officers or partners within 30 days after such change."

37-60-320. Fees.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 481, L. 2023. Amendment effective October 1, 2023.

1983 Amendment: In (1), substituted "state special revenue fund" for "earmarked revenue fund".

Administrative Rules

ARM 24.182.401 Fee schedule.

Part 4
Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 24.182.405 Insurance requirements.

37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry.

Compiler's Comments

2007 Amendment: Chapter 502 in (3) after "licensee" deleted "qualifying manager"; in (4) near end after "state government" inserted "a law enforcement agency" and at end inserted "unless the licensee has a contract with the agency"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1983 Amendment: Deleted former (4) and (5), which read: "(4) No licensee or officer, director, partner, manager, or employee of a private investigator may use a badge in connection with the official activities of the licensee's business.

(5) No private patrol licensee or officer, director, partner, manager, or employee of a private patrol licensee may use a badge except while engaged in guard or patrol work and while wearing a uniform."

Administrative Rules

ARM 24.182.407 Regulations of uniform.

37-60-403. Licensee advertising.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2007 Amendment: Chapter 502 after "address" inserted "and license number"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1983 Amendment: At end of section, changed "department" to "board".

37-60-404. Duty to maintain records.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: At beginning of section, changed "Each licensee" to "Each employer"; and at end of section changed "director" to "board".

37-60-405. Approval of weapons.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 15, Ch. 481, L. 2023. Amendment effective October 1, 2023.

2007 Amendment: Chapter 405 after "or" substituted "holders of identification cards as private security personnel or private investigators" for "identification card holders". Amendment effective July 1, 2007.

1987 Amendment: Substituted "armed licensees or identification card holders" for "registrants".

1983 Amendment: Substituted language (see 1983 Session Law) for former text that read: "Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by fine not to exceed $500 or by imprisonment in the county jail not to exceed 6 months or by both such fine and imprisonment."

Administrative Rules

ARM 24.182.420 Qualification for firearms for armed endorsement.

37-60-407. Regulation of uniforms, badges, and equipment.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 481, L. 2023. Amendment effective October 1, 2023.

1987 Amendment: In (1), at end, deleted "However, a person employed by a licensee who holds a commission as a peace officer, as defined in 46-1-201, is exempt from this provision."

Administrative Rules

ARM 24.182.407 Regulations of uniform.

37-60-409. Installation of new security alarm systems by electrician.

Compiler's Comments

2007 Amendment: Chapter 502 in first sentence near end before "security" substituted "licensed" for "journeyman" and in second sentence after "electrician" inserted "under this section"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

CHAPTER 61
ATTORNEYS AT LAW

Chapter Compiler's Comments

Publication of Rules: Rules governing attorneys at law are published in Vol. 1 of the MCA Annotations, as annotations to Art. VII, sec. 2, Mont. Const.

Chapter Case Notes

Appointed Counsel Violated Duties of Loyalty and Confidentiality — Trial Not Fundamentally Unfair or Unreliable — Substitute Counsel Appointed: The defendant's convictions for driving with a suspended license and failing to provide proof of insurance were not reversed because of ineffective assistance of counsel, despite the fact that appointed counsel violated his duties of loyalty and confidentiality to the defendant. Counsel's disclosure fell below an objective standard of reasonableness, establishing the first prong of the Strickland analysis. However, the defendant broadly argued that her counsel completely abandoned his duty and had a conflict of interest, requiring prejudice to be presumed under Strickland and U.S. v. Cronic, 466 US 648 (1984). The Supreme Court acknowledged federal precedent, in which courts have rarely applied Cronic, emphasizing that only nonrepresentation, not poor representation, triggers a presumption of prejudice. As applied, the defense counsel's errors, while violating duties of confidentiality and loyalty, did not result in complete abandonment of the defendant because she was provided substitute counsel for trial. The defense counsel's disclosure did not render the trial result "fundamentally unfair" or "unreliable" and the defendant could not show that there was a reasonable probability that, but for her counsel's unprofessional errors, the result of the proceeding would have been different. Libby v. Hubbard, 2018 MT 2, 390 Mont. 108, 408 P.3d 532, citing U.S. v. Cronic, 466 US 648 (1984), Strickland v. Wash., 466 US 668 (1984), Bell v. Cone, 535 US 685 (2002), and St. v. Bekemans, 2013 MT 11, 368 Mont. 235, 293 P.3d 843.

Corporation Must Be Represented — Attorney Required — Nonlawyer Subject to Contempt of Court: A corporation cannot appear on its own behalf through an agent other than an attorney. A nonlawyer who attempts to represent a corporation in court is guilty of contempt of court, and the decision to hold a person in contempt rests in the trial court's discretion. Flathead Bank of Bigfork v. Masonry by Muller, Inc., 2016 MT 269, 385 Mont. 214, 383 P.3d 215, following Cont. Realty, Inc. v. Gerry, 251 Mont. 150, 822 P.2d 1083 (1991), Zempel v. Liberty, 2006 MT 220, 333 Mont. 417, 143 P.3d 123, and H & H Dev., LLC v. Ramlow, 2012 MT 51, 364 Mont. 283, 272 P.3d 657.

No District Court Subject Matter Jurisdiction Over Attorney Disciplinary Matters: The Supreme Court suspended a Yellowstone County Deputy City Attorney, publicly censured her, and placed her on probation for 2 years. Plaintiff newspaper requested that the District Court provide the documents related to the attorney's disciplinary proceedings, but the District Court declined to release the documents on grounds that it lacked subject matter jurisdiction. On appeal, the Supreme Court affirmed. The Supreme Court, not the District Court, possesses original and exclusive jurisdiction and responsibility in all matters involving the conduct and disciplining of Montana attorneys, and court disciplinary rules provide for the confidentiality of disciplinary procedures. Billings Gazette v. St., 2008 MT 287, 345 M 385, 190 P3d 1126 (2008). See also Boe v. Court Administrator, 2007 MT 7, 335 M 228, 150 P3d 927 (2007).

Insurer-Imposed Billing Rules and Procedures Violative of Rules of Professional Conduct: When presented with the question of whether an attorney licensed to practice in Montana or admitted pro hac vice may agree to abide by an insurer's billing and practice rules that impose conditions limiting or directing the scope and extent of representation of the attorney's client, the insured, the Supreme Court considered the requirement imposed by some insurers that defense counsel secure the consent of the insurer's claim professional before proceeding with the case, in order to ensure adequate consultation. Insurers cited Jessen v. O'Daniel, 210 F. Supp. 317 (D.C. Mont. 1962), for the proposition that under Montana law, in the absence of a real conflict, the insurer and the insured are dual clients of defense counsel, arguing that as co-client of defense counsel, the insurer may require preapproval of attorney activities. The Supreme Court noted that although decisions subsequent to Jessen recognized the conclusion that an insurance contract may place absolute control of litigation in the hands of the insurer, the dual representation doctrine is not recognized under the Rules of Professional Conduct, but applies only in determining whether the communications between an insurer and its attorneys are subject to the attorney-client privilege. The contractual relationship between insurer and insured does not supersede or waive defense counsels' obligations under the Rules of Professional Conduct. Rather, the Rules of Professional Conduct have application in all cases involving attorneys and clients, and under the rules, the insured is the sole client of defense counsel. The court concluded that defense counsel in Montana who submit to the requirement of prior approval from the insurer violate the Rules of Professional Conduct by fundamentally interfering with their duties to exercise independent judgment and to give their undivided loyalty to insureds. The court noted that the prior approval requirement also creates a substantial appearance of impropriety by suggesting that the insurer, rather than defense counsel, controls the day-to-day details of the defense. In re Rules of Professional Conduct & Insurer Imposed Billing Rules & Procedures, 2000 MT 110, 299 M 321, 2 P3d 806, 57 St. Rep. 433 (2000).

Requirement That Attorney Submit Detailed Descriptions of Services Violative of Client Confidentiality: When presented with the question of whether an attorney licensed to practice in Montana or admitted pro hac vice may be required by an insurer's billing and practice rules to submit detailed descriptions of professional services to outside persons or entities, such as third-party insurance auditors, without first obtaining the informed consent of the client, insurers cited U.S. v. Mass. Institute of Technology, 129 F3d 681 (1st Cir. 1997), in claiming that as agents of insurers, third-party auditors are part of a privileged community or magic circle within which confidential information may be shared without waiver of attorney-client privilege or work product doctrine. The insurers also cited Indian Law Resource Center v. Dept. of Interior, 477 F. Supp. 144 (D. D.C. 1979), for the proposition that an auditor is a confidential agent of a privileged party, so disclosure of attorney fee information did not waive any privilege. The Supreme Court found neither case persuasive, concluding that third-party auditors are not confidential agents of insureds, but function rather as agents of insurers, and thus are not within the magic circle of confidentiality. Rather, disclosure of detailed billing statements to third-party auditors constitutes disclosure to a potential adversary because there is always the possibility of disputes between auditors and defense counsel and their clients that could result in litigation. As possible adversaries, auditors stand in potential conflict with the interests of insureds in competent representation by defense counsel who exercise their independent professional judgment. The court looked to Rule 1.6 of the Rules of Professional Conduct, which extends to all communications between insureds and defense counsel, making it broader in both scope and protection than the attorney-client privilege and the work product doctrine. Although disclosures of billing information to insurers are permissible because insurers are impliedly authorized to carry out representation, disclosure to third-party auditors is not impliedly authorized. The court also rejected the insurers' argument that insureds' consent by contract to disclosure of billing statements comports with Rule 1.6. An insured executing a liability policy with an insurer cannot know at that time what kind of claim will be brought against that insured, what the issues will be, what kind of services will be undertaken by defense counsel, or the legal consequences that might result from the disclosure of billing information to a third-party auditor. Under Rule 1.6, for an insured to make a fully informed consent to disclosure of detailed billing statements, the consent must be contemporaneous with the facts and circumstances of which the insured should be aware. Thus, disclosure by defense counsel of detailed descriptions of professional services to third-party auditors without first obtaining the informed consent of the insured violates confidentiality under the Rules of Professional Conduct. In re Rules of Professional Conduct & Insurer Imposed Billing Rules & Procedures, 2000 MT 110, 299 M 321, 2 P3d 806, 57 St. Rep. 433 (2000), distinguishing U.S. v. Schwimmer, 892 F2d 237 (2nd Cir. 1989).

Corporate Officer Without Authority for Pro Se Representation of Corporation — Refusal to Consider Brief: Plaintiff realty corporation brought an action in District Court to find defendants in default for failure to make payments under a contract for deed. Plaintiff was represented by counsel in District Court, but on appeal, it was represented by the president of the corporation. The Supreme Court, sua sponte, raised the issue of whether the corporation could be represented by its president and held that it could not. Citing Weaver v. Law Firm of Graybill, 246 M 175, 803 P2d 1089 (1990), the Supreme Court held that a corporation is a separate legal entity and cannot appear on its own behalf through an agent other than an attorney. The Supreme Court therefore determined not to consider the brief filed by the president on behalf of the corporation. Cont. Realty, Inc. v. Gerry, 251 M 150, 822 P2d 1083, 48 St. Rep. 1134 (1991).

Legal Malpractice Complaint — Upheld Under Liberal Rules of Pleading: In a legal malpractice suit, the defendant-attorney moved to dismiss the action on the grounds that the complaint did not state a cause of action because the complaint did not specifically allege that had it not been for the negligence of the attorney, the client would have won the lawsuit. The District Court dismissed the case. The Supreme Court reversed, ruling that under Montana's liberal rules of pleading, the complaint was sufficient. R.H. Schwartz Constr. Specialties, Inc. v. Hanrahan, 207 M 105, 672 P2d 1116, 40 St. Rep. 1926 (1983).

Part 1
Licensing Authorities

37-61-102. Attorneys' examining board — appointment, quorum, and powers.

Compiler's Comments

1993 Amendment: Chapter 221 in (1) increased board from 5 members to 7 members; in (3) deleted last sentence that read: "It shall be optional with the supreme court to appoint said board or to require the assistance of said board when appointed"; and made minor changes in style.

Part 2
Licensing

Part Compiler's Comments

Preamble: The preamble attached to Ch. 198, L. 1999, provided: "WHEREAS, Article VII, section 2, of the Montana Constitution provides that the Montana Supreme Court may make rules for admission to the bar and the conduct of its members."

Part Case Notes

Multistate Bar Examination: In response to a petition of students of the 1986 graduating class of the University of Montana (now University of Montana-Missoula) School of Law, the Supreme Court held that the petitioners did not establish compelling reasons for elimination of the multistate bar examination. The examination provides a practical and useful means of testing applicants' qualifications. In re Revision of Mont. Bar Exam., 222 M 25, 720 P2d 285, 43 St. Rep. 1158 (1986).

Restriction on Continuing Study of Law: The practices, policies, rules, and procedures under which the fitness of a student to continue the study of law is appraised, as applied to plaintiff, do not violate constitutional requirements of due process and equal protection or 37-61-204 (now repealed). Johnson v. Sullivan, 174 M 491, 571 P2d 798 (1977).

Admission to Practice for Particular Purpose: The Supreme Court has the exclusive power to determine who may practice law in Montana, and the court may admit an attorney from another jurisdiction for the purpose of investigation and prosecution of criminal offenses disclosed by a legislative audit. St. v. Cline, 170 M 520, 555 P2d 724 (1976).

Legislative Veto Power Not to Extend to Admission to the Bar: Rules of appellate and civil procedure are subject to disapproval by the Legislature; however, as to rules promulgated by the court relative to practice, admission to the bar, and conduct of members of the bar, the Legislature has no such veto authority as, under the principle of separation of powers, the Supreme Court was given exclusive authority to promulgate such rules. In re McCabe, 168 M 334, 544 P2d 825 (1975).

Judicial Power to Make Rules Exclusive: Under Art. VII, sec. 2, Mont. Const., the Supreme Court has exclusive power to make rules governing admission to the bar and the conduct of its members, and the purported amendment of 37-61-204 (now repealed) by Ch. 342, L. 1974, was patently void and in contravention of the principle of separation of powers set forth in Art. III, sec. 1, Mont. Const. In re McCabe, 168 M 334, 544 P2d 825 (1975); In re Senate Bill No. 630, 164 M 366, 523 P2d 484 (1974).

Legality of Diploma Privilege:

Diploma privilege accorded graduates of University of Montana (now University of Montana-Missoula) law school does not violate the Equal Protection Clause of the 14th amendment and does not impinge upon fundamental right of interstate travel. Huffman v. Mont. Supreme Court, 372 F. Supp. 1175 (D.C. Mont. 1974), affirmed 419 US 955 (1974).

Familiarity of Supreme Court Justices with University of Montana (now University of Montana-Missoula) law school and its faculty and students justifies continuation of practice of admitting graduates without examination. Goetz v. Harrison, 154 M 274, 462 P2d 891 (1969).

Grant of diploma privilege to graduates of University of Montana (now University of Montana-Missoula) law school while requiring graduates of other accredited schools to take bar examination did not constitute an unconstitutional denial of equal protection of laws. Goetz v. Harrison, 154 M 274, 462 P2d 891 (1969).

Applicability to Administrative Proceedings: Section 37-61-208 (now repealed) is applicable to administrative proceedings under the supervision of the Supreme Court. Application of Am. Smelting & Ref. Co., 164 M 139, 520 P2d 103 (1973).

Jurisdiction of District Court: District Court had no jurisdiction of an action contesting the validity of 37-61-204 (now repealed) and seeking restraining order against members of Supreme Court in their official capacity. Goetz v. Harrison, 153 M 403, 457 P2d 911 (1969). See also Boe v. Court Administrator, 2007 MT 7, 335 M 228, 150 P3d 927 (2007).

Waiver of Objection: Defendants, present in court during trial, who made no objection to the appearance of nonresident as their attorney, were not entitled to an order vacating and setting aside judgment on the ground that nonresident attorney was not licensed to practice in Montana. Shoal v. Bailey, 139 M 198, 362 P2d 234 (1961).

Admission Without Examination Denied: Where an applicant took and failed the bar examination three times, the Supreme Court will not allow a petition by the applicant to admit the applicant on motion and without examination, for this would set at naught the labors and recommendations of the Board of Law Examiners and nullify the governing statutes and rules of the court. Petition of Bergen, 125 M 607, 233 P2d 399 (1951).

Unauthorized Practice: Since the Supreme Court has been given the exclusive power to authorize persons to practice law and to deprive them of that right, it has jurisdiction to punish one attempting to practice in any court of law without a license as for a contempt. State ex rel. Freebourn v. Merchants' Credit Serv., Inc., 104 M 76, 66 P2d 337 (1937).

Fees of Nonresident Attorneys Not Allowed: While under 37-61-208 (now repealed) courts may permit a nonresident attorney who has been admitted to practice in his own state to appear on a cause on motion of a duly admitted attorney in this state, they may not allow a fee for his services to his client if successful. Vaill v. N. Pac. Ry. Co., 66 M 301, 213 P 446 (1923), overruled in Winer v. Jonal Corp., 169 M 247, 545 P2d 1094 (1976).

Notice to Nonresident Attorney: An attempted appearance for a foreign heir by an attorney residing in another state who had not been licensed to practice in this state either generally or specially, by means of a letter to the District Court stating that he appeared in behalf of the heir and requesting that notice in the proceeding be served upon him, amounted to no appearance and did not estop the heir from attacking the decree for want of notice. State ex rel. Rubin v. District Court, 62 M 60, 203 P 860 (1921), distinguished in Shoal v. Bailey, 139 M 198, 362 P2d 234 (1961).

Privileges of Nonresident Attorneys — Power of District Judge: A District Judge is without authority to grant anyone the privilege of appearing in his court to represent a client unless such person is duly admitted to practice law or a nonresident attorney, and in the latter case only for the purpose of conducting a particular cause and upon motion of a member of the bar of Montana. In re White, 54 M 476, 171 P 759 (1918).

Fraudulent Admission to Bar: It is ground for the disbarment of an attorney that he presented with his application a letter of recommendation to which he had forged the name of a local firm. In re Woodward, 27 M 355, 71 P 161 (1903).

37-61-201. Who considered to be practicing law.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Commission on Unauthorized Practice of Law Dissolved: Following extensive public comment, the Supreme Court concluded that a petition by the Commission on the Unauthorized Practice of Law to dissolve the Commission should be granted. The court will continue to address cases of unauthorized practice that are properly before the court and will continue to regulate the practice of law by Montana attorneys, but the Attorney General's Office of Consumer Protection will receive, process, evaluate, and address complaints of unauthorized practice of law by nonattorneys. In re Dissolving Comm'n on Unauthorized Practice of Law, 2010 MT 82, 356 Mont. 109, 242 P.3d 1282.

Constitutionality of Law Prohibiting and Punishing Unauthorized Practice of Law: O'Neil was a paralegal and state senator who was investigated by the Commission on the Unauthorized Practice of Law and permanently enjoined from engaging in conduct that constituted the practice of law. O'Neil challenged the constitutionality of 37-61-210 and this section, which prohibit and punish the unauthorized practice of law, on grounds that the law interfered with O'Neil's freedom of speech and the free speech of O'Neil's customers. O'Neil asserted that the statutes were too overbroad and vague to impose any restrictions on his liberty and insufficient to support the District Court's finding of contempt and entry of the injunction against him. The Supreme Court held that O'Neil incorrectly framed the freedom of speech challenge as an overbreadth challenge. The overbreadth doctrine allows plaintiffs to challenge a statute not because their own rights of free expression are violated but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression. However, O'Neil failed to show that the impact of the statutes on the conduct of other speakers would differ from its impact on O'Neil's conduct, so O'Neil's case was not susceptible to a facial overbreadth challenge based on hypothetical applications of the law not before the court. The central question of O'Neil's free speech challenge was whether the injunction unconstitutionally restricted O'Neil's right to free speech. The Supreme Court cited Ohralik v. Ohio St. Bar Ass'n, 436 US 447 (1978), for the holding that regulation of the bar is a subject only marginally affected with free speech concerns and noted that other courts have repeatedly rejected claims that an individual has a free speech right to practice law, free even of rationally based regulation, because such a broadly formulated argument, if successful, would greatly undermine the recognized power of states to regulate bar membership. Just as O'Neil had no free speech right to practice law without a license, O'Neil's customers had no free speech right to unlicensed legal representation because the constitutional right to receive legal advice is limited to clients of qualified attorneys, consistent with the state's interest in high standards of legal ethics. Section 37-61-210 and this section were not void for vagueness because they provided fair notice of the prohibited conduct. O'Neil's challenge to the constitutionality of the statutes failed. Mont. Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006).

Jury Trial Not Required in Civil Contempt Case: O'Neil was enjoined from and held in civil contempt for the unauthorized practice of law. O'Neil appealed on grounds that due process required that he be granted a jury trial on the charges. The Supreme Court disagreed, noting that under federal law, there might be a right to a jury trial in criminal contempt cases that impose serious contempt penalties, but that there is no general federal constitutional right to a jury trial for criminal contempt in federal or state courts. However, O'Neil was charged with civil contempt, not criminal contempt, and the penalty under 3-1-511 does not provide sanctions that rise to the level of a serious penalty. O'Neil was afforded adequate due process under 3-1-518, including a reasonable opportunity to obtain counsel, to prepare a defense or explanation prior to hearing, to testify in his own behalf, and to call witnesses at the hearing. O'Neil was not entitled to a higher standard of due process that might require a jury trial, and the District Court did not err in holding that a jury trial was not required. Mont. Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006), following Kauffman v. District Court, 1998 MT 239, 291 M 122, 966 P2d 715 (1998).

No Standing by Nonattorney to Assert Attorney-Client Privacy Rights: O'Neil was a paralegal and state senator who was investigated by the Commission on the Unauthorized Practice of Law and permanently enjoined from engaging in conduct that constituted the practice of law. O'Neil filed a counterclaim against the Commission and the State Bar, asserting that the Commission and the State Bar violated his, his customers', and his constituents' right to privacy by interfering with their discussion and disclosure of matters involving the preparation and strategy of their personal and legal matters with whom they chose. The Supreme Court disagreed. O'Neil was not licensed to practice law, and his customers therefore had no privacy right in seeking services from O'Neil that he was not authorized to perform, nor did O'Neil have representational standing to assert, on behalf of his customers, a privacy right that by law did not exist. Additionally, O'Neil's own right to privacy was not violated because a person has no privacy interest to misrepresent to the public that the person is a licensed professional when that person is not. The motions for summary judgment by the Commission and the State Bar were properly granted. Mont. Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006).

Sufficient Evidence That Paralegal Engaged in Unauthorized Practice of Law — No Requirement That Full Faith and Credit Be Given to Tribal Decision to Authorize Legal Practitioners: O'Neil was a paralegal and state senator who was investigated by the Commission on the Unauthorized Practice of Law and permanently enjoined from engaging in conduct that constituted the practice of law. O'Neil asserted that the evidence was insufficient to support the District Court's finding of contempt and entry of the injunction against him. However, O'Neil admitted that he drafted pleadings for his customers, provided them with legal advice, and appeared in court with them without having a license to practice law. This conduct unquestionably constituted the practice of law, and the District Court did not err in finding that O'Neil engaged in the unauthorized practice of law. O'Neil also asserted that because he was an attorney licensed to practice law in Blackfeet Tribal Court, the Supreme Court should give full faith and credit to the tribe's decision. The court noted that O'Neil was not an attorney with the tribal court, but rather a lay advocate. The doctrine of full faith and credit did not apply to the tribe's decision because as a sovereign nation, the tribe could license whomever it wants before its courts, but there was no requirement that the tribe's decision be given full faith and credit regarding the practice of law in Montana state courts. The District Court was affirmed. Mont. Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006).

Student Attorney Considered to Be Practicing Law: Following the resignation of the acting County Attorney, Jefferson County Commissioners interviewed applicants and subsequently selected Valerie Wilson to fill the position effective August 18, 1995. To be qualified for the position, state law requires an attorney to be admitted to practice for at least 5 years prior to appointment or election. The District Court concluded that although Wilson had begun practicing law as a student attorney in 1990, she was not admitted to the Montana Bar until October 1991 and thus would not achieve the required 5 years until October 1996. On appeal, the Supreme Court reversed, ruling that state law does not require that one must be admitted to the State Bar in order to be "deemed practicing law" in Montana. Certification of student attorneys by Supreme Court order along with certification by the dean of the law school provide the guidelines for admission of a student attorney to the practice of law. Shapiro v. Jefferson County, 278 M 109, 923 P2d 543, 53 St. Rep. 848 (1996).

Practicing Law Without License: The court properly dismissed appellants' complaint on the Daly Ditch decision because appellants' spokesman, Bernie Swift, was practicing law without a license. He is not licensed to practice law in Montana and therefore cannot act as spokesman for others before the court. Swift v. St., 226 M 439, 736 P2d 117, 44 St. Rep. 786 (1987).

Filling In Preprinted Forms Not Practice of Law: When the bank filled in blanks on preprinted forms for a mortgage and deed of trust as a service to the buyer and the sellers and incident to a real estate transaction in which the bank was involved, this did not constitute the unauthorized practice of law. The Supreme Court listed three factors as most important in resolving the question of whether filling in preprinted real estate forms is the practice of law: (1) the real estate instruments must be prepared only incident to transactions in which the maker is interested; (2) the instruments must be prepared without a separate charge; and (3) the preparation must not go beyond the filling in of blank forms. Pulse v. N. Am. Land Title Co. of Mont., 218 M 275, 707 P2d 1105, 42 St. Rep. 1578 (1985).

Collection Agency Practices as Constituting the Practice of Law: Collection agency corporation acting in a representative capacity when it prepared pleadings and filed them in the District Court on assigned claims in which it was not the real party in interest and not entitled to bring the action under the facts presented was doing something usually done and performed by attorneys at law in the practice of their profession, and the corporation and its agent were practicing law within the meaning of this section. State ex rel. Freebourn v. Merchants' Credit Serv., Inc., 104 M 76, 66 P2d 337 (1937).

Acts Constituting Practice of Law: One who appears as an attorney of record in a cause pending in the District Court, files papers in behalf of a party thereto, and advertises himself as an attorney in newspapers, on letterheads used by him in his correspondence, or by a sign displayed in front of his office, practices law in a court of record. In re White, 54 M 476, 171 P 759 (1918); In re Bailey, 50 M 365, 146 P 1101 (1915).

37-61-203. Clerk, sheriff, or coroner may not practice law.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-61-207. Oath.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-61-210. Penalty for practicing without license.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Constitutionality of Law Prohibiting and Punishing Unauthorized Practice of Law: O'Neil was a paralegal and state senator who was investigated by the Commission on the Unauthorized Practice of Law and permanently enjoined from engaging in conduct that constituted the practice of law. O'Neil challenged the constitutionality of 37-61-201 and this section, which prohibit and punish the unauthorized practice of law, on grounds that the law interfered with O'Neil's freedom of speech and the free speech of O'Neil's customers. O'Neil asserted that the statutes were too overbroad and vague to impose any restrictions on his liberty and insufficient to support the District Court's finding of contempt and entry of the injunction against him. The Supreme Court held that O'Neil incorrectly framed the freedom of speech challenge as an overbreadth challenge. The overbreadth doctrine allows plaintiffs to challenge a statute not because their own rights of free expression are violated but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression. However, O'Neil failed to show that the impact of the statutes on the conduct of other speakers would differ from its impact on O'Neil's conduct, so O'Neil's case was not susceptible to a facial overbreadth challenge based on hypothetical applications of the law not before the court. The central question of O'Neil's free speech challenge was whether the injunction unconstitutionally restricted O'Neil's right to free speech. The Supreme Court cited Ohralik v. Ohio St. Bar Ass'n, 436 US 447 (1978), for the holding that regulation of the bar is a subject only marginally affected with free speech concerns and noted that other courts have repeatedly rejected claims that an individual has a free speech right to practice law, free even of rationally based regulation, because such a broadly formulated argument, if successful, would greatly undermine the recognized power of states to regulate bar membership. Just as O'Neil had no free speech right to practice law without a license, O'Neil's customers had no free speech right to unlicensed legal representation because the constitutional right to receive legal advice is limited to clients of qualified attorneys, consistent with the state's interest in high standards of legal ethics. Section 37-61-201 and this section were not void for vagueness because they provided fair notice of the prohibited conduct. O'Neil's challenge to the constitutionality of the statutes failed. Mont. Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006).

Jury Trial Not Required in Civil Contempt Case: O'Neil was enjoined from and held in civil contempt for the unauthorized practice of law. O'Neil appealed on grounds that due process required that he be granted a jury trial on the charges. The Supreme Court disagreed, noting that under federal law, there might be a right to a jury trial in criminal contempt cases that impose serious contempt penalties, but that there is no general federal constitutional right to a jury trial for criminal contempt in federal or state courts. However, O'Neil was charged with civil contempt, not criminal contempt, and the penalty under 3-1-511 does not provide sanctions that rise to the level of a serious penalty. O'Neil was afforded adequate due process under 3-1-518, including a reasonable opportunity to obtain counsel, to prepare a defense or explanation prior to hearing, to testify in his own behalf, and to call witnesses at the hearing. O'Neil was not entitled to a higher standard of due process that might require a jury trial, and the District Court did not err in holding that a jury trial was not required. Mont. Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006), following Kauffman v. District Court, 1998 MT 239, 291 M 122, 966 P2d 715 (1998).

No Standing by Nonattorney to Assert Attorney-Client Privacy Rights: O'Neil was a paralegal and state senator who was investigated by the Commission on the Unauthorized Practice of Law and permanently enjoined from engaging in conduct that constituted the practice of law. O'Neil filed a counterclaim against the Commission and the State Bar, asserting that the Commission and the State Bar violated his, his customers', and his constituents' right to privacy by interfering with their discussion and disclosure of matters involving the preparation and strategy of their personal and legal matters with whom they chose. The Supreme Court disagreed. O'Neil was not licensed to practice law, and his customers therefore had no privacy right in seeking services from O'Neil that he was not authorized to perform, nor did O'Neil have representational standing to assert, on behalf of his customers, a privacy right that by law did not exist. Additionally, O'Neil's own right to privacy was not violated because a person has no privacy interest to misrepresent to the public that the person is a licensed professional when that person is not. The motions for summary judgment by the Commission and the State Bar were properly granted. Mont. Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006).

Sufficient Evidence That Paralegal Engaged in Unauthorized Practice of Law — No Requirement That Full Faith and Credit Be Given to Tribal Decision to Authorize Legal Practitioners: O'Neil was a paralegal and state senator who was investigated by the Commission on the Unauthorized Practice of Law and permanently enjoined from engaging in conduct that constituted the practice of law. O'Neil asserted that the evidence was insufficient to support the District Court's finding of contempt and entry of the injunction against him. However, O'Neil admitted that he drafted pleadings for his customers, provided them with legal advice, and appeared in court with them without having a license to practice law. This conduct unquestionably constituted the practice of law, and the District Court did not err in finding that O'Neil engaged in the unauthorized practice of law. O'Neil also asserted that because he was an attorney licensed to practice law in Blackfeet Tribal Court, the Supreme Court should give full faith and credit to the tribe's decision. The court noted that O'Neil was not an attorney with the tribal court, but rather a lay advocate. The doctrine of full faith and credit did not apply to the tribe's decision because as a sovereign nation, the tribe could license whomever it wants before its courts, but there was no requirement that the tribe's decision be given full faith and credit regarding the practice of law in Montana state courts. The District Court was affirmed. Mont. Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006).

Nonlawyer Filing Brief and Notice of Appearance for Civil Defendant: In the state's action against Brue for an injunction, alleging operation of an unlicensed and unshielded motor vehicle wrecking facility, Huffine filed a notice of appearance as counsel for Brue and a brief in support of the pleadings. Huffine advised the court that it should direct all further correspondence to him, "a private citizen having been designated to act as counsel by and for the Defendant". The actions of Huffine, who was not a licensed attorney, constituted the practice of law without a license and were a contempt of court. Huffine v. District Court, 285 M 104, 945 P2d 927, 54 St. Rep. 1065 (1997).

Denial of Lay Counsel in City Court — Any Prejudice Cured by Trial De Novo on Appeal: Henry was charged with driving under the influence and was tried in City Court. The City Court refused to permit a family friend to represent Henry in the trial. Henry then appealed to the District Court for a trial de novo in which Henry was represented by counsel. The Supreme Court refused to address the merits of Henry's claim of violation of the right to counsel. The trial de novo on appeal to the District Court cured any prejudice that may have resulted from the City Court's decision regarding representation. St. v. Henry, 271 M 491, 898 P2d 1195, 52 St. Rep. 516 (1995).

Nonlawyer Representing Others — Effect of Failure of Others to File Appeal Notice: A nonlawyer may represent himself or herself but may not represent another, including on appeal. Because the nonlawyer's relatives did not file notices of appeal, they were not properly before the court on the nonlawyer's appeal of the case. Traders St. Bank of Poplar v. Mann, 258 M 226, 852 P2d 604, 50 St. Rep. 509 (1993).

Limitation on Lay Representation in Courts of Limited Jurisdiction: Petitioners sought a declaration by the Supreme Court that under 25-31-601 and this section, nonattorneys have the right to represent clients in Montana courts of limited jurisdiction on a regular and recurring basis. After accepting original jurisdiction of the petition, the Supreme Court held that only practice before courts of limited jurisdiction as is specifically authorized by statute or court rule may be undertaken by lay people. This representation does not extend to criminal proceedings in any court or to representation in any jurisdiction on a regular and recurring basis. Section 25-31-601 provides for a one-time only grant of the privilege in Justice Court civil cases to enable a friend or relative to assist and speak on behalf of a party at one proceeding. Recurring representation constitutes the unauthorized practice of law. Sparks v. Johnson, 252 M 39, 826 P2d 928, 49 St. Rep. 124 (1992).

Pro Se Practice of Law by Corporate Shareholders and Directors Prohibited: Although shareholders and directors of a corporation have the right under 35-1-930 (now repealed) to take action on behalf of the corporation, that does not entitle those persons to practice law on behalf of the corporation. A corporation is a separate legal entity and cannot appear through an agent other than an attorney. Representation by a stockholder or director who is not an attorney constitutes contempt of court punishable under this section. Weaver v. Law Firm of Graybill, Ostrem, Warner & Crotty, 246 M 175, 803 P2d 1089, 47 St. Rep. 2316 (1990).

No Right to Representation by Nonlawyer: A defendant has an inalienable right to represent himself, but has no right to demand representation by a nonlawyer. A District Court lacks authority to allow representation of a defendant by a nonlawyer. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

Corporate Practice of Law: Where an incorporated collection agency was practicing law, it was guilty of contempt for its acts in the Justices' Courts as well as in the District Court, for such a corporation cannot be entitled to practice law and is not a "person" entitled to the exceptions stated in this section. State ex rel. Freebourn v. Merchants' Credit Serv., Inc., 104 M 76, 66 P2d 337 (1937).

Acts Constituting Practice of Law Without a License: One who, though not admitted by the Supreme Court to practice in the courts of the state, holds himself out as an attorney at law by conducting legal correspondence on letterheads on which was printed his name followed by "Attorney at Law", by signing himself as such, by advertising himself by the use of a professional card in newspapers and telephone directory, and by a sign on his office building as an attorney, by taking and perfecting appeals from the Justice to the District Court, and appearing in the appellate court in connection with such appeals is practicing without a license and guilty of contempt of court under this section. In re Phillips, 64 M 492, 210 P 89 (1922).

District Court Power to Permit Practice Without License: Since a District Judge has no authority to permit one to practice law without having been admitted to the bar, such person cannot justify his violation of the law in this regard by alleging such permission as his excuse. In re White, 54 M 476, 171 P 759 (1918).

Nonresident Attorneys — Admission for Particular Case: Under 37-61-208 (now repealed), a nonresident attorney who has been admitted to practice in the highest courts of the state of his residence may, on motion of a member of the bar of this state, be permitted by a Judge before whom a trial is pending to appear and conduct that particular case. In re White, 54 M 476, 171 P 759 (1918).

Acts Constituting Practice of Law: A person who advises clients in legal matters pending or to be brought before a court of record, prepares pleadings or proceedings for use in a court of record, or appears before a court of record, either directly or by a partner or proxy, is practicing law in a court of record; and, if he has no license to do so, he is guilty of contempt of court. In re Bailey, 50 M 365, 146 P 1101 (1915).

37-61-211. Annual license tax — municipal tax prohibited.

Compiler's Comments

2013 Amendment: Chapter 7 deleted former (3)(b) that read: "(b) The court administrator shall, as provided in 3-1-702(2), report annually on expenditures authorized in subsection (3)(a) of this section at the first meeting of the law and justice interim committee after the end of each fiscal year"; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendment: Chapter 420 inserted (3) regarding allocation of license tax and requiring annual report; and made minor changes in style. Amendment effective January 1, 2006.

1989 Amendment: In (1) increased annual tax from $10 to $25; and made minor changes in style and grammar. Amendment effective January 1, 1990.

Applicability: Section 2, Ch. 379, L. 1989, provided: "[This act] is effective January 1, 1990, and applies to license tax for years beginning after December 31, 1989."

Case Notes

Validity of Attorney License Tax: A $25 license tax on attorneys, along with the attendant penalty provision for nonpayment, has the effect of regulating the practice of law in that an attorney may not practice law in Montana without paying the tax. The tax is a minimal and inoffensive intrusion on the Supreme Court's constitutional prerogatives and is valid as a legislative enactment in aid of the power of the court to regulate the practice of law. In re Application of Kradolfer v. Smith, 246 M 210, 805 P2d 1266, 47 St. Rep. 1861 (1990).

Tax on Sale of Attorney's Services — Invalid: A city ordinance imposing an annual tax on every lawyer or law firm carrying on the practice of law, calculated on the basis of gross revenue generated from attorney-client relationships, was held to be an unconstitutional sales tax. The tax was beyond the scope of self-government powers and in violation of 7-1-112, since it was not related to any regulatory control measure for the health or welfare of the city but was a tax on the sale of attorneys' services. Brueggemann v. Billings, 221 M 375, 719 P2d 768, 43 St. Rep. 905 (1986).

Regulatory Municipal Business License Applicable to Attorneys — Unconstitutional: A business license ordinance enacted by a self-governing municipality requiring municipal licensure of attorneys and providing for regulation was an unconstitutional encroachment on the Supreme Court's authority to regulate the bar as provided in Art. III, sec. 2, Mont. Const., because the ordinance conditions attorneys' access to the practice of law. The ordinance included police provisions that could conceivably cover standards of practice, prohibited attorneys from carrying on their occupation without procuring a municipal license, required municipal licensure of nonresident attorneys practicing in the municipality, and provided for fines and incarceration for failing to comply with the ordinance. Harlen v. Helena, 208 M 45, 676 P2d 191, 41 St. Rep. 162 (1984).

State Jurisdiction Over Indian Contract: One licensed to practice law in this state cannot make a contract as an attorney to be performed both on and off the reservation and then use his status as an Indian to defeat state jurisdiction when he is sued on the contract involved. Crawford v. Roy, 176 M 227, 577 P2d 392 (1978).

Attorney General's Opinions

City Licensing: A city can license local aspects of interstate commerce if not a direct burden or impediment; but enterprises preempted by state regulation are not subject to city licensing. 37 A.G. Op. 100 (1977).

37-61-214. Penalty for practicing without certificate indicating payment of tax.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Commission on Unauthorized Practice of Law Dissolved: Following extensive public comment, the Supreme Court concluded that a petition by the Commission on the Unauthorized Practice of Law to dissolve the Commission should be granted. The court will continue to address cases of unauthorized practice that are properly before the court and will continue to regulate the practice of law by Montana attorneys, but the Attorney General's Office of Consumer Protection will receive, process, evaluate, and address complaints of unauthorized practice of law by nonattorneys. In re Dissolving Comm'n on Unauthorized Practice of Law, 2010 MT 82, 356 Mont. 109, 242 P.3d 1282.

Attorney Disclaiming Knowledge of Licensing Requirements: Upon returning to the state, an attorney paid his outstanding bar dues but was denied a license to practice law because there was an unresolved matter pending against him before the Commission on Practice. Subsequently, the attorney entered a notice of appearance in two actions. The attorney argued that he should not be disbarred for his actions because he was unsure of his status since paying his bar dues. The Supreme Court held that an attorney cannot disclaim knowledge of the licensing laws of the state. Practicing without a license is a misdemeanor that can subject an attorney to disbarment. In re Halprin, 244 M 363, 798 P2d 80, 47 St. Rep. 1242 (1990).

State Jurisdiction Over Indian Contract: One licensed to practice law in this state cannot make a contract as an attorney to be performed both on and off the reservation and then use his status as an Indian to defeat state jurisdiction when he is sued on the contract involved. Crawford v. Roy, 176 M 227, 577 P2d 392 (1978).

37-61-215. Allowance of attorney fees to unlicensed persons forbidden — authorized paralegal fees.

Compiler's Comments

2009 Amendment: Chapter 443 inserted (2) regarding paralegal fees; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 6, Ch. 443, L. 2009, was a saving clause.

Severability: Section 7, Ch. 443, L. 2009, was a severability clause.

Applicability: Section 8, Ch. 443, L. 2009, provided: "[This act] applies to actions and proceedings filed on or after [the effective date of this act]." Effective October 1, 2009.

Case Notes

Pro Se Litigant — No Standing to Question Validity of Statute: With respect to the purported unconstitutionality of 37-61-215 on the grounds that it did not provide for attorney fees to nonattorneys, Lussy had no standing to question its validity. He was not a prevailing party in the action below. The general rule is in the absence of statute or contract, attorney fees will not be awarded. On a reciprocal basis, if the respondents were entitled to attorney fees in this case by virtue of contract, Lussy would be entitled to the same under 28-3-704. However, to bring himself within the latter section, he must be the prevailing party. Lussy's assertion that he was attorney-in-fact for the members of his family was frivolous. Lussy v. Bennett, 214 M 301, 692 P2d 1232, 41 St. Rep. 2487 (1984).

Sister State Attorney — Recovery for Services: Court held that an attorney licensed in one state may recover for services rendered in Montana, even though not duly licensed in Montana, if he initially discloses that fact to his client and further informs him of the necessity to associate with local counsel because such an interpretation is better suited to the modern practice of law and in promoting comity between the states. Winer v. Jonal Corp., 169 M 247, 545 P2d 1094 (1976), overruling Vaill v. N. Pac. Ry. Co., 66 M 301, 213 P 446 (1923).

Justice Court Practice: Under this section the allowance of an attorney's fee by any court is unlawful in an action where the party to whom allowed is represented by one other than a duly licensed attorney. A demand for such allowance by one not an attorney in a Justice Court amounts to an unlawful practice of law. State ex rel. Freebourn v. Merchants' Credit Serv., Inc., 104 M 76, 66 P2d 337 (1937).

Admission and License Required: An attorney's fee is not allowable in any action or proceeding in which attorneys' fees are allowed by law unless the attorney has been duly admitted and licensed to practice in Montana, and though the words of the section are "duly admitted or licensed", the word "or" must be read "and", any other construction rendering the provision meaningless. Vaill v. N. Pac. Ry. Co., 66 M 301, 213 P 446 (1923).

Attorney General's Opinions

Party Authorized to Represent Self in Justice's Court: Section 25-31-601 authorizes a party who is not a corporation to represent himself in a Justice's Court. Section 37-61-215 attaches a stipulation to 25-31-601 but does not preclude a party from representing himself. 30 A.G. Op. 16 (1963).

Part 3
Disbarment and Suspension

Part Case Notes

Dual Representation During Federal Criminal Investigation Violative of Rules of Professional Conduct: The Office of Disciplinary Counsel (ODC) filed a formal disciplinary complaint against an attorney for the attorney's representation of both a husband and wife, without obtaining an informed waiver of any actual or potential conflict, during a federal criminal investigation of the husband and, after the attorney no longer represented the husband, for the attorney's continued representation of the wife in the federal investigation and in divorce proceedings initiated against the husband. The Supreme Court upheld the Commission on Practice's decision to strike an ODC witness's testimony on the basis that the ODC improperly withheld new information from the attorney's counsel. The attorney violated Rule 1.7, Montana Rules of Professional Conduct, by concurrently representing the husband and wife during the federal investigation, regardless of whether the husband's defense was actually prejudiced, and violated Rule 1.9, Montana Rules of Professional Conduct, by subsequently representing the wife, whose position was materially adverse to her husband, the attorney's former client. In re Neuhardt, 2014 MT 88, 374 Mont. 379, 321 P.3d 833.

Fraud Substantiated in Attorney's Handling of Probate Case — Violation of Attorney's Duty of Truthfulness — Public Censure Warranted: Attorney Potts represented parties in a will contest. Two of the parties knew that some joint tenancy accounts were not included in the value of the estate and, in an attempt to secure the funds in the accounts, directed Potts to remain silent as to whether the settlement agreement prepared by Potts included the accounts. Potts failed to notify the court and counsel for the estate that one of his clients intended to obtain the jointly held property regardless of the outcome of any settlement. The Supreme Court subsequently determined in In re Estate of Stukey, 2004, MT 279, 323 M 241, 100 P3d 114 (2004), that the parties intended that the total estate value, including the joint tenancy accounts, be included in the settlement. A professional misconduct complaint was later filed against Potts, alleging that Potts engaged in or assisted in client fraud by failing to disclose material information to opposing counsel and that Potts breached the duty of candor to the tribunal by failing to disclose material information to the court. The Commission on Practice found that Potts knew that his clients were using Potts' services to perpetuate fraud in violation of Rules 1.2(d) and 3.3(a)(2) of the Montana Rules of Professional Conduct (MRPC), that Potts failed to fulfill his ethical obligation to inform the clients that he would not participate in the fraudulent conduct, a violation of Rule 1.2(d), MRPC, and that Potts violated the duty of candor to the tribunal in violation of Rule 3.3(a)(2), MRPC. The Commission recommended that Potts be publicly censured and suspended from the practice of law for 30 days. Potts appealed, raising issues of client confidentiality, asserting that his clients did not engage in fraud because the accounts passed to his client as a matter of law and thus could not have been included as part of the settlement basis, contending that he had no duty to correct opposing counsel's erroneous understanding of the settlement, and arguing that the Commission's proposed sanctions were inappropriate. The Supreme Court held that, by definition, Potts' clients were engaged in fraudulent conduct, that Potts assisted in the conduct by not disclosing the conduct to the court and to opposing counsel in violation of the duty of truthfulness and by drafting a stipulation stating that all disputes had been settled when he knew that the parties relied on a misrepresentation in drafting a settlement, and that Potts could have avoided the situation by withdrawing from representation. Potts' conduct resulted in considerable injury to the parties, requiring one District Court proceeding and two appeals to determine the meaning and scope of the stipulation. The Commission's findings were affirmed. However, the court reversed the suspension of Potts' practice in light of mitigating factors of Potts' history of compliance with the rules of professional conduct and his good character and reputation to this point and held that public censure sufficed to apprise Potts of the gravity of the misconduct. In re Potts, 2007 MT 81, 336 M 517, 158 P3d 418 (2007).

Constitutional Due Process and Equal Protection Rights Not Violated by Procedure in Rule 9 Regulating Practice of Attorneys: Formal complaints against two attorneys were filed with the State Bar Commission on Practice, which recommended disciplinary actions against the attorneys. In their appeal, the attorneys contended that Rule 9 of the Rules on Lawyer Disciplinary Enforcement, which sets forth the procedure relied on by the Commission, unconstitutionally violated their rights to due process, to an impartial tribunal, and to equal protection, because the procedure improperly vested both investigatory and adjudicatory functions in one body—the Commission. The Supreme Court disagreed. Applying Withrow v. Larkin, 421 US 35, 43 L Ed 2d 712, 95 S Ct 1456 (1975), the court noted that bias in a decisionmaker is not presumed and must be proved and that state and federal case law generally rejects the idea that the combination of judging and investigation functions is a denial of due process. Although attorneys who are confronted with proceedings that may result in the loss of their licenses to practice law are entitled to the same due process considerations as any other professionals faced with such proceedings, the attorneys in this case cited no authority stating that either equal protection or due process requires that identical procedures must be followed in all types of disciplinary proceedings, nor did they establish that the procedure for handling disciplinary complaints under Rule 9 denied them their constitutional rights. In re Goldstein & Albers v. Comm'n on Practice, 2000 MT 8, 297 M 493, 995 P2d 923, 57 St. Rep. 31 (2000), following In re Wyse, 212 M 339, 688 P2d 758, 41 St. Rep. 1780 (1984).

Constitutional Right to Due Process Not Violated by Confidentiality Provisions in Rule 13 Regulating Complaints Against Attorneys: Formal complaints against two attorneys were filed with the State Bar Commission on Practice, which recommended disciplinary actions against the attorneys. In their appeal, the attorneys contended that Rule 13 of the Rules on Lawyer Disciplinary Enforcement violated their rights to due process, based on their alleged inability to prepare for their cases before the Commission because of the prohibition against reviewing documents in the Commission's files that were filed prior to the filing of the formal complaints against them. Although agreeing that any exculpatory evidence obtained by the Commission prior to filing of the formal complaints that is related to the matters eventually included in the formal complaints must be disclosed to the respondent attorneys, the Supreme Court's examination of the files and records in the present case revealed no such exculpatory evidence. Thus, the attorneys failed to demonstrate any due process violation. In re Goldstein & Albers v. Comm'n on Practice, 2000 MT 8, 297 M 493, 995 P2d 923, 57 St. Rep. 31 (2000), following In re Wyse, 212 M 339, 688 P2d 758, 41 St. Rep. 1780 (1984).

Constitutional Right to Equal Protection Not Violated by Confidentiality Provisions in Rule 13 Regulating Complaints Against Attorneys: Formal complaints against two attorneys were filed with the State Bar Commission on Practice, which recommended disciplinary actions against the attorneys. In their appeal, the attorneys contended that Rule 13 of the Rules on Lawyer Disciplinary Enforcement violated their rights to equal protection under the law, making a comparison with the constitutional provision in Art. VII, sec. 11, Mont. Const., and statutes concerning the Judicial Standards Commission under which a judge responding to a disciplinary complaint may waive confidentiality. The Supreme Court found the argument inscrutable and unworthy of consideration. The attorneys failed to establish that they were treated differently under the Rules on Lawyer Disciplinary Enforcement from than any other attorney facing disciplinary charges. In re Goldstein & Albers v. Comm'n on Practice, 2000 MT 8, 297 M 493, 995 P2d 923, 57 St. Rep. 31 (2000), following In re Wyse, 212 M 339, 688 P2d 758, 41 St. Rep. 1780 (1984).

Constitutional Right to Free Speech Not Violated by Confidentiality Provisions in Rule 13 Regulating Complaints Against Attorneys: Formal complaints against two attorneys were filed with the State Bar Commission on Practice, which recommended disciplinary actions against the attorneys. In their appeal, the attorneys contended that Rule 13 of the Rules on Lawyer Disciplinary Enforcement violated their rights to free speech by placing a blanket gag order on all freedom of expression relating to ethical charges against an attorney, citing Doe v. Supreme Court of Fla., 734 F. Supp. 981 (S.D. Fla. 1990). The Supreme Court distinguished Doe based on totally different facts and circumstances. The attorneys failed to establish that their free speech rights were violated. In re Goldstein & Albers v. Comm'n on Practice, 2000 MT 8, 297 M 493, 995 P2d 923, 57 St. Rep. 31 (2000), following In re Wyse, 212 M 339, 688 P2d 758, 41 St. Rep. 1780 (1984).

Disciplinary Rules for Attorneys in Remarks on Criminal Cases — Violation of Attorney's Freedom of Speech: Disciplinary Rules 7-107(B) and (H) of the Canons of Professional Ethics, adopted in Montana to govern the conduct of attorneys, restrict the use of extrajudicial statements in criminal actions on various subjects to protect the accused's right to a fair trial. The Supreme Court voided the Rules because, read literally, the Rules invaded an attorney's right of free speech; thus, a standard for interpretation of the Rules would be necessary to balance an attorney's right to free speech and the accused's right to a fair trial. The court declined to adopt such a standard and instead provided that new disciplinary rules be drafted incorporating such a standard. In re Keller, 213 M 196, 693 P2d 1211, 41 St. Rep. 2045 (1984).

Commission on Practice and Disciplinary Proceedings — Not Violative of Due Process: The Commission on Practice, a body appointed by the Supreme Court, undertakes proceedings relating to the discipline of members of the bar. The proceedings are designed to establish a record upon which the Supreme Court may act, the Supreme Court having retained exclusive jurisdiction over disciplinary matters. The accused member of the bar retains full rights of representation, confrontation, production of evidence, and argument before the Commission. The report of the Commission is not binding on the Supreme Court, and the accused may again make denials and argue defenses before the Supreme Court. This process does not constitute any deprivation of due process rights but rather provides an orderly process preserving in the accused the widest latitude of due process. In re Wyse, 212 M 339, 688 P2d 758, 41 St. Rep. 1780 (1984), followed in In re Goldstein & Albers v. Comm'n on Practice, 2000 MT 8, 297 M 493, 995 P2d 923, 57 St. Rep. 31 (2000).

Preservation of Confidences and Secrets of Client — Disciplinary Rule 4-101: Disciplinary Rule 4-101 relates to the preservation of confidences and secrets of a client. As the term "secret" is used in the rule, the rule prohibits the unconsented-to disclosure of information that would be embarrassing or detrimental to the client even though the information related to the client's child rather than to the client herself. In re Wyse, 212 M 339, 688 P2d 758, 41 St. Rep. 1780 (1984).

37-61-301. Disbarment.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part of Section Not Codified: A portion of section 93-2026, R.C.M. 1947, providing that the provisions of that section will not abate any action then pending, has not been codified in the MCA, as the language was only of temporary importance. However, the portion of the section has not been repealed and is still valid law. Citation may be made to Sec. 402, Code of Civil Procedure 1895, as amended by sec. 1, Ch. 36, L. 1903.

Case Notes

General 1184
Conviction of Crime 1186
Deceit Involving Moral Turpitude 1187
Misappropriation 1187
Moral Turpitude 1188

GENERAL

Dual Representation During Federal Criminal Investigation Violative of Rules of Professional Conduct: The Office of Disciplinary Counsel (ODC) filed a formal disciplinary complaint against an attorney for the attorney's representation of both a husband and wife, without obtaining an informed waiver of any actual or potential conflict, during a federal criminal investigation of the husband and, after the attorney no longer represented the husband, for the attorney's continued representation of the wife in the federal investigation and in divorce proceedings initiated against the husband. The Supreme Court upheld the Commission on Practice's decision to strike an ODC witness's testimony on the basis that the ODC improperly withheld new information from the attorney's counsel. The attorney violated Rule 1.7, Montana Rules of Professional Conduct, by concurrently representing the husband and wife during the federal investigation, regardless of whether the husband's defense was actually prejudiced, and violated Rule 1.9, Montana Rules of Professional Conduct, by subsequently representing the wife, whose position was materially adverse to her husband, the attorney's former client. In re Neuhardt, 2014 MT 88, 374 Mont. 379, 321 P.3d 833.

When Statute of Limitations Begins to Run on Legal Malpractice Claim Stemming From Criminal Representation: In a case of first impression, the Supreme Court considered whether the statute of limitations for a legal malpractice claim should be tolled while a criminal defendant pursues a claim for postconviction relief or whether the defendant should pursue a legal malpractice claim simultaneously with the claim for postconviction relief. After considering both approaches, the court adopted the two-track approach in Gebhardt v. O'Rourke, 510 NW 2d 900 (Mich. 1994), because it incorporates a strict reading of the statute of limitations and at the same time addresses problems posed by multiple litigations. Thus, pursuant to Gebhardt, a criminal defendant must file a malpractice claim within 3 years of discovering the act, error, or omission. With the claim preserved, the defendant can then seek a stay in the civil suit until the criminal case is resolved, and the trial court handling the civil suit would have discretion regarding the duration of the stay, keeping in mind the nature of the claim asserted for postconviction relief. After adopting this new rule, the Supreme Court declined to retroactively apply the rule in the present case on equitable grounds, but did put parties convicted in criminal proceedings on notice of the new rule henceforth. Ereth v. Cascade County, 2003 MT 328, 318 M 355, 81 P3d 463 (2003).

County Attorney Censured for Questioning Defendant Without Opposing Counsel Present: The Supreme Court censured a County Attorney for questioning a defendant when the defendant's attorney was not present and for failing to attend several hearings scheduled by the Commission on Practice. In re Quinlan, 245 M 438, 801 P2d 1337, 47 St. Rep. 2182 (1990).

Commission Findings Adopted — Disbarment Ordered: Adopting the findings of the Commission on Practice, the Supreme Court ordered disbarment based on facts that the attorney: (1) had been temporarily suspended from practice in 1990 for conviction of the crime of issuing bad checks and for nonpayment of State Bar of Montana membership dues; (2) failed to respond orally or in writing to a complaint filed by the Commission; (3) failed to perfect an appeal in the Ninth Circuit Court of Appeals on behalf of a client who paid him to do so; (4) was convicted of criminal contempt for failure to appear at the sentencing of his client before the U.S. District Court of Western Michigan and misrepresented to the District Court Judge the nature of the Montana bad check charge; (5) was suspended by the State Bar in 1986 for noncompliance with court rules for mandatory continuing legal education and for failure to pay State Bar dues; (6) represented a client in federal court in California while suspended from practice of law in Montana; and (7) was admonished by the Third Circuit Court of Appeals in 1988 for failure to diligently prosecute his client's cause. In re Shrom, 246 M 333, 806 P2d 23, 47 St. Rep. 2086 (1990).

Commission Not Divested of Jurisdiction by Surrender of License: The appellant argued that his surrender of his license divested the Commission on Practice of its jurisdiction so that it could not take the further action of recommending his disbarment. The Supreme Court disagreed, pointing out that the pertinent rule was amended prior to the date of the surrender so that surrender no longer affected the Commission's jurisdiction. In re Pearce, 246 M 313, 806 P2d 21, 47 St. Rep. 2054 (1990).

Distinction Between Disbarment and Suspension: The Supreme Court held that although the statutes do not differentiate between disbarment and suspension, a difference does exist. The court indicated that disbarment implies a more permanent or severe penalty even though the disbarred attorney has the same rights to seek reinstatement as a suspended attorney. In re Morse, 245 M 49, 798 P2d 75, 47 St. Rep. 1189 (1990).

Consideration of Nature of Dealings Between Attorney and Client: When the determination of duties owed to an insurance company by its attorney involved a question of fact, the District Court did not err in examining past legal dealings between the parties or in ascertaining the exact duties expected of the attorney from an examination of the parties' conduct. Based on that conduct, the court properly concluded that the attorney had fulfilled his required advisory duties and was not liable for any negligence or breach of contract. Aetna Fin. Co. v. Ball, 237 M 535, 774 P2d 992, 46 St. Rep. 1031 (1989).

Establishment of Professional Negligence Action Against Attorney — Proof Required: To establish a professional negligence action, the plaintiff must prove that the professional owed him a duty and that the professional failed to live up to that duty, causing damages to the plaintiff. In pursuing a negligence or breach of contract action against an attorney, the plaintiff must initially establish the existence of an attorney-client relationship. The plaintiff must then establish that the acts constituting negligence or breach of contract occurred, proximately causing damages to the plaintiff. Finally, the plaintiff must establish that but for the negligence or breach of contract, the client would have been successful in the prosecution or defense of the action. Lorash v. Epstein, 236 M 21, 767 P2d 1335, 46 St. Rep. 151 (1989), citing Christy v. Saliterman, 179 NW 2d 288 (Minn. 1970), and followed in Merzlak v. Purcell, 252 M 527, 830 P2d 1278, 49 St. Rep. 139 (1992), Oar Lock Land & Cattle Co. v. Crowley, 253 M 336, 833 P2d 146, 49 St. Rep. 456 (1992), Kane v. Miller, 258 M 182, 852 P2d 130, 50 St. Rep. 488 (1993), Moore v. Does 1 to 25, 271 M 162, 895 P2d 209, 52 St. Rep. 399 (1995), Fang v. Bock, 2001 MT 116, 305 M 322, 28 P3d 456 (2001), and Babcock Place Ltd. Partnership v. Berg, Lilly, Andriolo, & Tollefsen, P.C., 2003 MT 111, 315 M 364, 69 P3d 1145 (2003).

Misconduct Warranting Disbarment Rather Than Suspension: Disbarment, rather than temporary suspension, was appropriate for an attorney charged with seven counts of misconduct in the practice of law, including the use of methods that serve only to embarrass and burden a third party, failure to provide competent representation, failure to exercise the degree of competency required of an attorney in prosecuting an action without a good faith basis, and the promotion of prostitution. In re Bechhold, 235 M 383, 771 P2d 563, 46 St. Rep. 74 (1989).

Indefinite Suspension Proper — Violation of Ethics Rules: The Supreme Court adopted the recommendations of the Commission on Practice that an attorney be indefinitely suspended from practice, be required to remit client fees, and pay Commission costs. The Commission found that Rules 1.16(d) and 8.4(c) of the Rules of Professional Conduct were violated by the attorney's failure to remit client fees and return his work product to the clients when he knew or should have known that he was going to leave the state and could not represent the clients. Also, Rules 8.4(c), 8.4(d), and 3.3(a)(1) were violated when the attorney set forth as one continuous quotation statements actually taken from two entirely different portions of a deposition, resulting in a misleading representation of testimony. In re Ziskind, 233 M 510, 766 P2d 218, 45 St. Rep. 1691 (1988).

Suspension and Censure Appropriate — Ethics Violations: The Supreme Court affirmed the recommendations of the Commission on Practice to censure and suspend an attorney after substantiating counts of filing frivolous and unfounded ethics violations claims against opposing counsel; disobedience of a judge's order; attempting to obstruct justice; physical assault; outrageous, undignified, and discourteous conduct; intimidation and threats to a public official; contacting a prospective client for private representation on a matter investigated by the County Attorney's office; conflict of interest; contacting an adverse party represented by counsel; and a continued pattern of misconduct. In re Belue, 232 M 365, 766 P2d 206, 45 St. Rep. 1119 (1988).

Expert Testimony Required in Legal Malpractice Case — Directed Verdict Proper: An attorney's standard of care depends on the skill and care ordinarily exercised by attorneys—a criteria that rarely falls within the common knowledge of lay persons. Therefore, expert testimony is required in a legal malpractice case. Absent such testimony, a directed verdict was proper. Carlson v. Morton, 229 M 234, 745 P2d 1133, 44 St. Rep. 1929 (1987), followed in Brown v. Small, 251 M 414, 825 P2d 1209, 49 St. Rep. 98 (1992), and Moore v. Does 1 to 25, 271 M 162, 895 P2d 209, 52 St. Rep. 399 (1995).

Disciplinary Action Against Attorney: The Supreme Court relied on the findings of fact of the Commission on Practice and concluded that the attorney who was the subject of the disciplinary action failed to shift the burden of demonstrating that the findings were not supported by the evidence or that the recommendations were erroneous or unlawful. However, the court rejected the Commission's recommendation that the attorney be disbarred. In re Goldman, 179 M 526, 588 P2d 964, 35 St. Rep. 1912 (1978).

Maliciously Attempting to Deprive Persons of Property: Professional misconduct in the form of maliciously filing a quitclaim deed to cloud the title of property in order to deprive the owner of the property merits disbarment. In re Conklin, 169 M 549, 556 P2d 1237, 33 St. Rep. 1024 (1976).

Exceptions to Findings of Commission on Practice — Sham: The purpose of making and filing exceptions to the report, findings, and recommendations of the Commission on Practice is to permit one charged with misconduct to challenge the findings of the Commission or its conclusions resulting from an adversary hearing wherein the weight of evidence is considered and the conclusions arrived at thereby. When the person charged offers no evidence and waives the presentation of proof, an exception to the findings or conclusions of the Commission is a sham and frivolous. In re Carstensen, 167 M 321, 539 P2d 387 (1975).

Recommendations of Commission Rejected: Although the recommendations of the Commission on Practice are given careful consideration, the recommendation of indefinite suspension was rejected for attorney who admitted to violations involving moral turpitude with no proof of mental disease or defect, and disbarment was ordered. In re Hall, 164 M 543, 530 P2d 456 (1974).

Debauching of Young Girl: Disbarment was justified for attorney who had been previously disciplined by reprimand and who, after having been charged with debauching young girl, represented her procurer in criminal proceedings, represented both parties in procurer's divorce action, represented girl in quashing affidavit after procurer had married her, and represented another defendant charged with raping the girl. In re Keast, 159 M 311, 497 P2d 103 (1972).

No Jurisdictional Question as to Decision to Act: Where the accused attorney is charged with felonies committed without the sphere of his duties as such but the court, after an investigation by the Attorney General and report made to it by him sufficient to move its discretion, has decided to act, its exercise of that discretion does not present a jurisdictional question. In re Young, 77 M 332, 250 P 957 (1926).

Jurisdiction of Supreme Court Exclusive: The Supreme Court has exclusive jurisdiction in a disbarment proceeding to hear the evidence and determine the truth of charges of crimes and misdemeanors involving moral turpitude, whether committed within this jurisdiction or not and whether within or without the sphere of official duty. In re Thresher, 33 M 441, 84 P 876 (1906).

Sufficiency of Evidence: Sufficient facts were not stated to render respondent liable to disbarment under subsection (2)(e) of this section. In re Weed, 26 M 241, 67 P 308 (1902), distinguished in In re McCue, 80 M 537, 261 P 341 (1927).

Accusation by Private Person Allowed: Where an accusation preferred by a private person in a disbarment proceeding is for a cause named in subsection (2)(e) of this section, an objection that such accusation is preferred by a person not authorized by law to inform the court of the matters therein charged is without merit. In re Wellcome, 23 M 140, 58 P 45 (1899).

Nature of Action Not Criminal: A proceeding in disbarment is in no sense a criminal investigation. In re Thresher, 33 M 441, 84 P 876 (1906); In re Wellcome, 23 M 213, 58 P 47 (1899).

Truth of Charges Alone Not Investigated: Where the accused is charged with bribery and conspiracy, the court will refuse to inquire into the truth of the charges unless reasons be furnished by the accusation or by a showing in support of it why jurisdiction should be entertained in advance of a criminal prosecution and conviction. In re Wellcome, 23 M 140, 58 P 45 (1899), distinguished in In re Young, 77 M 332, 250 P 957 (1926).

CONVICTION OF CRIME

Censure and Temporary Suspension for Crimes of Moral Turpitude: The record of conviction of misdemeanors involving moral turpitude, including failure to disburse and an aggravated case of resisting arrest, was conclusive evidence of cause for public censure and removal or suspension from practice. In re Vainio, 240 M 413, 787 P2d 744, 46 St. Rep. 2094 (1989).

Scheme to Defraud as Warranting Disbarment: Conviction by a jury in a federal court of the offense of devising and intending to devise a scheme to defraud and to obtain money by means of false and fraudulent pretenses warranted attorney's disbarment. In re Gross, 160 M 506, 503 P2d 995 (1972), certiorari denied 410 US 991 (1973).

Action by Court on Own Motion: Under subsection (2)(a) of this section, whenever it is brought to its attention that an attorney of the bar of this state has been convicted of a felony or misdemeanor involving moral turpitude in a state or federal court, the Supreme Court will on its own motion and on the record of conviction alone strike his name from the roll of attorneys. In re Peters, 73 M 284, 235 P 772 (1925).

Only Record of Conviction Necessary: Since, generally, the record of conviction of an attorney itself shows whether the crime or misdemeanor of which he was convicted involved moral turpitude, the only question before the Supreme Court in a disbarment proceeding based upon subsection (2)(a) of this section is whether he was convicted, not whether he was actually guilty. In re Peters, 73 M 284, 235 P 772 (1925).

Nature of Action Not Criminal: A proceeding in disbarment is in no sense a criminal investigation. In re Thresher, 33 M 441, 84 P 876 (1906); In re Wellcome, 23 M 213, 58 P 47 (1899).

DECEIT INVOLVING MORAL TURPITUDE

Fraudulent Procurement of Real Estate: Disbarment, rather than 3 months' suspension, was ordered for attorney who grossly overcharged aged and illiterate client on annual retainer basis, then procured conveyance to himself of valuable real estate on pretext of protecting client's interest but refused to reconvey on demand claiming that the conveyance had been in consideration for legal services. In re McDonald, 112 M 129, 113 P2d 790 (1941).

Defrauding of Bank: Evidence in a disbarment proceeding reviewed and held sufficient to warrant the referee's findings that the accused had made a false entry upon a blank bank deposit slip on which by inadvertence the signature of a bank officer had been placed in carbon and on which on presentation to the bank he had obtained credit for the amount of such entry, thus defrauding the bank of that amount. In re Young, 77 M 332, 250 P 957 (1926).

Misrepresentation as to Sanity of Party: Where an attorney at law testifies, in an action which, by reason of the defense interposed, involves the legality of a marriage, that one of the parties to such marriage was at the time thereof insane, such testimony being given for the purpose and with the intent of deceiving the court and inducing the presiding judge to believe that such party was incapable of entering into a marriage contract, such conduct of the attorney justifies his disbarment under subsection (2)(e) of this section. In re O'Keefe, 55 M 200, 175 P 593 (1918).

Attorney Representing Both Parties: Where an attorney acted for both parties in a divorce proceeding without acquainting the court with all the facts connected with the case, he was guilty of deceit and malpractice involving moral turpitude. In re Carleton, 33 M 431, 84 P 788 (1906).

Divorce Proceedings — Agreement for Fees: The conduct of an attorney who entered into a contract with his client in a divorce proceeding whereby he was to receive, in addition to the attorney's fee that might be allowed him by the court, a portion of all money received by his client as alimony, and who failed to call such agreement to the court's attention prior to the making of the order allowing counsel fees, is reprehensible and in violation of his duty as a member of the bar, in that he was guilty of deceit and malpractice involving moral turpitude. In re Carleton, 33 M 431, 84 P 788 (1906).

MISAPPROPRIATION

Commingling of Client's Funds: When an attorney commingled the proceeds of a Veterans' Administration (now Veterans Affairs) loan with his own funds and used them to pay obligations other than that for which the loan was intended, deceived the Veterans' Administration (now Department of Veterans Affairs) and the client as to the status of documents pertaining to the loan, and had received a prior private censure for like conduct, he was ordered disbarred. In re Carstensen, 167 M 321, 539 P2d 384 (1975).

Unauthorized Use of Estate Funds as Deceit: The conduct of an attorney in opening a checking account in the name of an estate of which he had been appointed executor and making withdrawals for his personal use constituted deceit and malpractice involving moral turpitude. In re O'Donnell, 143 M 51, 387 P2d 303 (1963).

Willful Refusal to Return Funds as Violation of Oath: Under subsection (2)(b) of this section, providing that an attorney may be disbarred for "violation of the oath taken by him, or of his duties as such attorney", an attorney may be punished for a willful omission to remit money collected by him as such, even though he did not practice deceit and frankly admits his delinquency. In re McCue, 80 M 537, 261 P 341 (1927).

Misrepresentation and Personal Use of Funds Deposited With Clerk: An attorney, after securing an order of court to that effect, withdrew the sum of $414.90 deposited by a client with a Clerk of Court as a tender, after final disposition of the action by the Supreme Court adverse to his client, and thereafter, in reply to inquiries by the client, repeatedly stated that the money was still in the hands of the Clerk, where it should remain until the end of the litigation so as to keep the tender good, notwithstanding the funds had long been misappropriated by him. Under pretense that he was still conducting the litigation in her behalf, he obtained the additional sum of $65 at various times as court fees and expenses. For these acts the attorney was guilty of conduct warranting his disbarment. In re Thresher, 33 M 441, 84 P 876 (1906). See also In re Lunke, 56 M 226, 182 P 126 (1919).

MORAL TURPITUDE

Pattern of Conduct as Reason for Disbarment: Even though an act falls short of an offense involving moral turpitude under case law prior to adoption by the Supreme Court of the canons of professional ethics, it may justify disbarment. Even though an individual act or omission may in and of itself be insufficient grounds for action, repeated violations establishing a pattern of conduct revealing a gross disregard for the highest standards of honesty, justice, or morality may and should be grounds for disbarment, suspension, censure, or a request for surrender of license to practice law. In re Advisory Opinion to Comm'n on Practice, 156 M 514, 495 P2d 1128 (1971).

Failure to Return Employees' Withholding Taxes: Failure of attorney to make return of employees' withholding taxes was offense involving moral turpitude under this section so as to justify indefinite suspension from practice. In re Kline, 156 M 177, 477 P2d 881 (1970).

Vices to Affect Attorneys' Personal or Professional Integrity: Since complaints against attorneys may be prosecuted only for causes specified by this section, where specific charges under that section are made and none of them present the question of general moral delinquency other than such as may be included under subsection (2)(e), "being guilty of deceit, malpractice, crime or misdemeanor involving moral turpitude", the court is confined to the specifications made against him, upon which he was tried, and cannot punish him for vices affecting to some extent his moral character but not his personal or professional integrity. In re McCue, 80 M 537, 261 P 341 (1927).

Definition: Moral turpitude, within the meaning of this section, authorizing the disbarment of an attorney on conviction of a crime or misdemeanor involving moral turpitude, is everything done contrary to justice, honesty, or good morals. In re Peters, 73 M 284, 235 P 772 (1925).

Forgery: The crime of forgery involves moral turpitude within the meaning of subsection (2)(a) of this section. In re Sutton, 50 M 88, 145 P 6 (1914).

37-61-302. Record of conviction.

Case Notes

Additional Filing Not Required: It is not necessary to file any complaint or to issue or serve any citation in a proceeding for the disbarment of an attorney where he has been convicted of a felony or a misdemeanor involving moral turpitude, where the record of conviction has been duly certified to the Supreme Court. In re Bloor, 21 M 49, 52 P 779 (1898).

37-61-303. Proceedings required on receipt of record of conviction.

Case Notes

Entry of Default: In entering a default by respondent attorney and an order of disbarment, the court may consider as facts within its own knowledge the results of an intensive investigation and the respondent's failure to appear before the local grievance committee or to answer accusations made against him. In re Crawford, 141 M 185, 380 P2d 664 (1962).

Judgment Required Upon Final Conviction: Upon lodgment with the Clerk of the Supreme Court of a certified copy of the record of an attorney's conviction for a felony, that court, under this section, if it appear of record that the judgment of conviction is final, either by reason of his acquiescence in it or made so by affirmance on appeal, must, without notice or citation, enter judgment that his name be stricken from the roll of attorneys. In re Thresher, 54 M 474, 170 P 1163 (1918); In re Sutton, 50 M 88, 145 P 6 (1914).

Conviction of Crime — No Discretion for Supreme Court: Where an attorney has been convicted of a felony or a misdemeanor involving moral turpitude, the Supreme Court is left without discretion in the matter of his removal or suspension but must proceed under this section on receipt of a certified copy of the record of conviction, which is considered to be conclusive evidence. In re Wellcome, 23 M 140, 58 P 45 (1899); In re Bloor, 21 M 49, 52 P 779 (1898).

37-61-309. Judgment.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Permanent Disbarment Not Mandated for Felony: Permanent disbarment is not mandated upon conviction of a felony. In re McKeon, 201 M 515, 656 P2d 179, 39 St. Rep. 2270 (1982).

Reinstatement Following Disbarment for Multiple Felonies: On the record, petitioner showed by clear and convincing evidence that he was entitled to reinstatement to the State Bar of Montana. Petitioner had pleaded guilty to the felonies of offering false evidence, obtaining money by false pretenses, grand larceny by bailee, and forgery. Eight years had passed, and he had served his prison time and was making restitution on schedule. He had lived an exemplary life during the 8 years and had a record of immense service to the public prior to the commission of the felonies. The evidence against reinstatement consisted of a letter stating that felons should be denied reinstatement and a statement from a businessman that reinstatement should be denied in view of the severity of the crimes. Reinstatement was supported by 20 letters and by petitions with approximately 250 signatures, 48 of them those of lawyers. No person requested an opportunity to appear at a hearing in opposition to the application for reinstatement. An investigation into the application had been made. The evidence uniformly showed that applicant had reformed and that the public believed he had reformed. In re McKeon, 201 M 515, 656 P2d 179, 39 St. Rep. 2270 (1982).

Negligence of Attorney: Attorney was deprived of the right to practice in the courts of Montana for 45 days where he was guilty of deliberate falsehood in telling client that case filed in April 1956 was at issue and was awaiting trial, the debtor in the action having entered no appearance and default judgment such as was entered on April 11, 1961, could have been entered in June of 1956. In re Hirst, 140 M 91, 368 P2d 157 (1962).

Part 4
Provisions Regulating Practice

Part Case Notes

Breach of Rules of Professional Conduct Alone Insufficient to Require Disqualification of Counsel — Party Must Show Sufficient Proof of Prejudice — Without Evidence That Party Was Actually Prejudiced, No Abuse of Discretion to Deny Motion to Disqualify Opposing Party's Attorney. Rysewyk v. Mont. Opticom, LLC, 2023 MT 111, 412 Mont. 420, 530 P.3d 839.

Defendant's Convictions Upheld — Alleged Ineffective Assistance Not Contributing to Convictions: The defendant was questioned by police after he was arrested and charged with deliberate homicide for the death of his ex-wife and tampering with evidence. During the questioning, the defendant was advised of his Miranda rights, he declined to waive his rights, and at times he indicated that he did not need an attorney, while at other times he indicated that he had an attorney. The defendant also said he would not answer questions, but he continued to do so and never told the police to stop. At trial, the defendant filed a motion to suppress, arguing that the police interview violated his right to counsel. The District Court denied the motion, and the defendant's attorney failed to seek admission of a video recording of the interview for the purpose of pointing out undisputed inconsistencies in the trial transcript. One of the clips in the video allegedly showed the defendant indicating he would not continue in the interview without an attorney. After deliberations, the jury convicted the defendant of both charges. On appeal, the defendant argued that his defense counsel provided ineffective assistance by failing to present the video recording of the police interview at the suppression hearing. The Supreme Court determined there was no reasonable probability the results of the trial would have been different had the video recording of the interview been held admissible based on all the other evidence in the case. Consequently, the defendant was unable to establish prejudice and his ineffective assistance of counsel claim was denied. St. v. Larson, 2015 MT 271, 381 Mont. 94, 356 P.3d 488.

Motion to Disqualify Properly Denied — No Violation of Rules of Professional Conduct: The wife in a dissolution proceeding moved to disqualify and enjoin the husband's attorney on the basis that the wife had consulted the same attorney years before the dissolution was filed about representing the wife in a dissolution proceeding against the husband. The District Court denied the motion. On appeal, the Supreme Court affirmed, concluding that disqualification was improper under Rule 1.20 of the Rules of Professional Conduct because the wife did not establish that any of the information she divulged to the attorney could have any impact on the current dissolution proceeding and that it was permissible for the attorney to testify at the disqualification hearing pursuant to Rule 3.7 of the Rules of Professional Conduct and, pursuant to Rules 1.6 and 1.9 of the Rules of Professional Conduct, to use information about her previous contact with the wife to respond to the wife's allegations. In re Marriage of Perry, 2013 MT 6, 368 Mont. 211, 293 P.3d 170.

Causation in Legal Malpractice Claim — Summary Judgment Not Proper — Plaintiffs Not Required to Show Claim Would Have Been Successful: An attorney missed a statute of limitations deadline in a medical malpractice case by failing to file an application with the Montana Medical Legal Panel before filing a complaint in District Court, as required under 27-6-301 and 27-6-701. After the medical malpractice claim was dismissed, the plaintiffs filed a legal malpractice case against the attorney, but the District Court dismissed the legal malpractice case during summary judgment on the grounds that the plaintiffs did not carry the burden of showing that the underlying medical malpractice claim would have been successful. On appeal, the Supreme Court revisited Busta v. Columbus Hosp. Corp., 276 Mont. 342, 916 P.2d 122 (1996), Babcock Place Ltd. Partnership v. Berg, Lilly, Andriolo, & Tollefsen, P.C., 2003 MT 111, 315 Mont. 364, 69 P.3d 1145, and Fisher v. Swift Transp. Co., Inc., 2008 MT 105, 342 Mont. 335, 181 P.3d 601, and determined that it was error for the District Court to require the plaintiffs to prove that the medical malpractice case would have been successful given that there was no independent intervening cause after the plaintiffs' injury. All that was required was a showing that the plaintiffs' injury (not being able to pursue the case) would not have occurred but for the attorney's negligent conduct. Labair v. Carey, 2012 MT 312, 367 Mont. 453, 291 P.3d 1160. On remand in Labair v. Carey, 2016 MT 272, 385 Mont. 233, 383 P.3d 226, the Supreme Court determined that the plaintiffs more probably than not would have recovered a settlement. Thus, the plaintiffs were entitled to judgment as a matter of law on this first element of settlement damages.

Loss of Opportunity for Settlement Based on Attorney Missing Filing Deadline — Potential Value in Medical Malpractice Claim That Can Survive Summary Judgment: An attorney missed a statute of limitations deadline in a medical malpractice case by failing to file an application with the Montana Medical Legal Panel before filing a complaint in District Court, as required under 27-6-301 and 27-6-701. After the medical malpractice claim was dismissed, the plaintiffs filed a legal malpractice case against the attorney, but the District Court dismissed the legal malpractice case during summary judgment on the grounds that the plaintiffs did not carry the burden of showing that the underlying medical malpractice claim would have been successful. On appeal, the Supreme Court concluded that the plaintiffs could have survived summary judgment on the underlying medical malpractice claim and that the loss of the opportunity to present the claim was an injury that prevented the plaintiffs from receiving a favorable outcome by way of settlement or trial. Labair v. Carey, 2012 MT 312, 367 Mont. 453, 291 P.3d 1160, following Spencer v. Beck, 2010 MT 256, 358 Mont. 295, 245 P.3d 21. On remand in Labair v. Carey, 2016 MT 272, 385 Mont. 233, 383 P.3d 226, the Supreme Court determined that the plaintiffs more probably than not would have recovered a settlement. Thus, the plaintiffs were entitled to judgment as a matter of law on this first element of settlement damages.

Neglect by Attorney Attributable to Client — Sanctions Upheld: Ending a 3-year discovery dispute, the District Court sanctioned the defendants by ordering a default judgment in favor of the plaintiff. The defendants moved to set aside the order, claiming that their attorney was partly responsible and that his actions should not be attributed to them. The District Court denied the motion, reasoning that the defendants had prevented the attorney from producing discovery documents by not providing them to the attorney in the first place, and the Supreme Court affirmed. Kraft v. High Country Motors, Inc., 2012 MT 83, 364 Mont. 465, 276 P.3d 908.

Former or Current Client — Plaintiffs' Attorney Joins Law Firm Representing Defendants — Motion to Disqualify Firm — Denial of Motion Reversed: The plaintiffs sued a lender for breach of contract, breach of the covenants of good faith and fair dealing, and fraud. Early in the case, the plaintiffs' attorney hired a tax attorney to advise them on certain issues related to their case. The plaintiffs and both attorneys met to discuss the case against the lender. Following the meeting, the plaintiffs received from the tax attorney an engagement letter and a bill, which the plaintiffs paid. A few weeks before the trial date, the plaintiffs received a letter from the tax attorney notifying them that he had taken a position with the law firm representing the lender. This was the plaintiffs' first notice that the tax attorney intended to join the opposing law firm. The plaintiffs moved to disqualify the firm from representing the lender. The lender claimed that the plaintiffs were former clients of the tax attorney and therefore, under the Rules of Professional Conduct, the firm could continue to represent the lender as long as there was a screen in place. The District Court agreed that the plaintiffs were former clients and denied the motion to disqualify. The plaintiffs appealed to the Supreme Court, which reversed the District Court. The Supreme Court concluded that the plaintiffs reasonably believed they were current clients of the tax attorney based on the engagement letter, the fact the bill did not indicate it was a final bill, and the lack of notice. Because the plaintiffs were current clients at the time the tax attorney joined the other law firm, the Supreme Court held that the firm was disqualified from representing the lender. Krutzfeldt Ranch, LLC v. Pinnacle Bank, 2012 MT 15, 363 Mont. 366, 272 P.3d 635.

Charging Unreasonable Fee and Improper Handling of Client's Trust Funds Grounds for Attorney's Sanction: Although the Commission on Practice found that attorney Engel violated no rules of practice and recommended no sanctions, the Supreme Court weighed the Commission's findings and disagreed. Engel violated Rule 1.5 of the Rules of Professional Conduct by charging an unreasonable fee of $121,545 for handling an uncontested trust termination proceeding for which an attorney customarily would have received between $1,500 and $2,500. Engel also improperly commingled hundreds of thousands of dollars of trust funds with his personal operating account rather than depositing the client funds into a trust account, in violation of Rules 1.15 and 1.18 of the Rules of Professional Conduct. The court remanded the case to the Commission for recommendation of an appropriate sanction for the rules violations. In re Engel, 2007 MT 172, 338 M 179, 169 P3d 345 (2007).

Following remand, the Commission on Practice, citing several mitigating factors, recommended that Engel be subjected to public censure and be required to pay the costs of the disciplinary proceedings, but that no harsher sanctions be imposed. The Supreme Court examined each cited mitigating factor, but failed to find any of the factors persuasive. Engel was therefore not only publicly censured and required to pay the costs of the disciplinary proceedings, but was also suspended from the practice of law for 60 days. In re Engel, 2008 MT 42, 341 M 360, 177 P3d 502 (2008).

Following the 2008 Engel decision (Engel II), Engel filed an objection, alleging that the process by which the Supreme Court reviewed the disciplinary proceeding deprived the court of jurisdiction over the formal complaint filed by the Office of Disciplinary Counsel against Engel. The Supreme Court vacated the public censure and accepted briefs on the jurisdiction issue. After a review of the proceedings in Engel I and Engel II, the court concluded that nothing in the process by which the court came to review Engel's disciplinary proceeding deprived the court of its constitutionally endowed authority to regulate lawyer conduct, so the court maintained subject matter jurisdiction throughout. Engel enjoyed the full panoply of rights afforded to lawyers facing disciplinary proceedings, and no procedural due process rights were violated. Engel's public censure was reinstated, and he was assessed with costs of the proceedings and suspended from practice for 60 days. In re Engel, 2008 MT 215, 344 M 219, 194 P3d 613 (2008).

No Showing of Damages or That Client Would Have Prevailed on Lost Appeal of Marital Dissolution Case — Failure of Legal Malpractice Claim: Richards brought a malpractice claim against an attorney who negligently failed to appeal Richards' marriage dissolution proceeding prior to the deadline for appeal. The District Court dismissed the claim, ruling that the court, rather than a jury, should decide the consequences of the attorney's failure to file the appeal and that the lost appeal would not have succeeded. Richards appealed, but the Supreme Court affirmed. Even though the attorney admitted malpractice by allowing the claim to expire, the attorney contended that no damages occurred. When a malpractice claim changes to the question of whether an attorney perfected an appeal, the analysis shifts from one of fact to one of law, which is properly considered by the court rather than a jury. The question of the probable outcome of a lost appeal also presents a question of law for the trial court to decide based on the special expertise required to analyze the relevant law and rules of appellate procedure, and the review is limited to the transcript and record of the underlying action and arguments presented by counsel. Here, there was substantial credible evidence regarding primary parenting time, valuation of the marital estate, and child support payments showing that Richards' lost appeal would not have resulted in a successful or favorable outcome. Further, one element of a legal malpractice claim requires a showing that the attorney's conduct proximately caused damages suffered by the claimant. Because Richards failed to show that the lost appeal would have been successful, he also failed to show that the attorney's breach caused any damages, so the malpractice claim failed. Richards v. Knuchel, 2005 MT 133, 327 M 249, 115 P3d 189 (2005).

Attorney's Duty of Care Owed to Estate Beneficiary — Standing of Estate to Bring Legal Malpractice Action: A personal representative brought a legal malpractice damage suit on behalf of the estate against an attorney who drafted a trust document and will. Before granting summary judgment to the attorney, the District Court raised the issue of whether the estate and personal representative had standing to bring the suit, based on a questionable fiduciary relationship between the plaintiffs and the attorney. On appeal, the Supreme Court concluded that as a representative of the decedent, the estate stood in the shoes of the decedent and was thus considered to be in privity with the attorney, so the estate had standing to bring a malpractice claim. Further, the question of whether the trust and the personal representative had standing was a question of fact to be determined at trial, so summary judgment was precluded and the case remanded for further proceedings. Watkins Trust v. Lacosta, 2004 MT 144, 321 M 432, 92 P3d 620 (2004).

Legal Malpractice Claim by Estate Not Barred by Res Judicata, Equitable Estoppel, or Judicial Estoppel: A personal representative brought a legal malpractice damage suit on behalf of the estate against an attorney who drafted a trust document and will. The trust beneficiaries brought a separate suit against the trustee. The District Court granted summary judgment for the attorney on grounds of res judicata, equitable estoppel, and judicial estoppel. On appeal, the Supreme Court reversed. Res judicata and collateral estoppel did not apply because the subject matter and parties in the beneficiaries' suit were different. Equitable estoppel did not apply because the defendants did not present any evidence to establish that they relied on an act by the personal representative or changed their position for the worse because of that act. Judicial estoppel did not apply because the judicial admission in this case referred only to plaintiffs' legal theory and not to an unequivocal statement of fact and because of the absence of any evidence that defendants were misled by a judicial admission. Thus, summary judgment was inappropriate. Watkins Trust v. Lacosta, 2004 MT 144, 321 M 432, 92 P3d 620 (2004).

No Attorney Negligence Given Reasonable Representation — Jury Verdict Affirmed: Plaintiffs contended that defendant, their attorney, was negligent by failing to obtain and review all relevant documents in order to explain the nature of a business transaction in order for plaintiffs to make an informed decision and that by failing in this duty, the attorney negligently allowed plaintiffs to make a binding commitment to sell the business. After 5 days of trial, which included conflicting testimony from experts for both parties, a jury found that the attorney was not negligent. After reviewing the record, the Supreme Court affirmed. When viewed in the light most favorable to the attorney, there was sufficient credible evidence to support the jury's conclusion that the attorney met the duty of care to plaintiffs. Moreover, it was within the standard of care for the attorney to rely on the opinion of a financial consultant as to the reasonableness of the financial tests contained in the sale agreement. The court declined to reverse a jury verdict that was supported by substantial credible evidence. Byers v. Cummings, 2004 MT 69, 320 M 339, 87 P3d 465 (2004).

No Prejudice in Jury Instructions Explaining General Elements of Legal Malpractice: Plaintiffs contended that general instructions regarding the elements of legal malpractice given to the jury in a legal malpractice case were internally inconsistent, incomplete, and essentially confusing. Defendant attorney asserted that the jury was advised that the attorney had a duty to use the care and skill ordinarily used by lawyers practicing in Montana and that the jury was not confused by an instruction that did not recite every duty discussed by an expert. The Supreme Court agreed with defendant. Although the trial court might have crafted other instructions that may have better assisted the jury in considering the law applicable to the case, when taken as a whole, the instructions, when coupled with extensive expert testimony for both parties, adequately described the attorney's standard of care and did not potentially mislead or confuse the jury, resulting in prejudice to plaintiffs. Byers v. Cummings, 2004 MT 69, 320 M 339, 87 P3d 465 (2004).

Question of Material Fact Regarding Law Firm's Handling of Real Estate Contract — Summary Judgment Improperly Granted: Plaintiff sued its law firm for work performed in writing a contract for a real estate transaction. Plaintiff's expert opined that the firm violated the standard of care when it: (1) had a nonattorney with no contract drafting experience draft the initial agreement and insert an inaccurate legal description of the property obtained from plaintiff's own engineering firm; (2) used the phrase "more or less" to cure defects in the property description when the legal description was clearly deficient; (3) failed to include a provision that required the seller to sign future applications for a final plat; and (4) failed to execute proper escrow documents to prevent the seller from having veto power over any proposed development of the property. The law firm presented its own expert to refute the allegations. The District Court analyzed the allegations of negligence, applying the legal malpractice standards in Lorash v. Epstein, 236 M 21, 767 P2d 1335 (1989), and, finding no issues of material fact, granted the law firm's motion for summary judgment. Plaintiff appealed, and the Supreme Court reversed, finding that summary judgment was improper. The conflicting expert testimony itself raised a material issue of fact regarding the standard of care that required resolution by a trier of fact. Further, material questions remained concerning whether the law firm's independent failure to recognize a problem with the legal description contributed as a cause to plaintiff's damages, whether the firm followed the requisite standard of care in drafting the escrow agreement, and whether the purported terms of the escrow agreement satisfied the requisite standard of care. Babcock Place Ltd. Partnership v. Berg, Lilly, Andriolo, & Tollefsen, P.C., 2003 MT 111, 315 M 364, 69 P3d 1145 (2003).

Defense Attorney's Remarks Constituting Entry of Plea Without Defendant's Consent and Undermining Plea Agreement — Prejudice Warranting New Trial: Jefferson indicated in a pretrial letter to the District Court that he wished to withdraw from a plea agreement to plead guilty to felony assault in order to have the opportunity to either be acquitted or be convicted of a lesser offense than felony assault. However, in both opening statements and in closing arguments, Jefferson's defense counsel admitted Jefferson's guilt to felony assault, undermining the very purpose for which Jefferson withdrew from the plea agreement and directly contravening the reason Jefferson accepted the risk involved in facing the more serious charge of attempted deliberate homicide in a jury trial. Counsel's statements had the effect of entering a plea for Jefferson without Jefferson's consent and by which the jury was not bound. The admission could not be considered a trial strategy or tactical decision under the circumstances, and counsel's conduct fell below the reasonable range of professional conduct required. The question under the Strickland test then became whether Jefferson was prejudiced by counsel's conduct. Counsel precluded Jefferson from making a case for a lesser offense by admitting Jefferson's guilt of felony assault, denying Jefferson of both the right to deny guilt and to have the benefit of the previous agreement to admit guilt. There would have been no reason for Jefferson to withdraw from the plea agreement or to go to trial if he had been aware that his counsel would initiate the trial with an admission of guilt to felony assault. This prejudicial conduct by counsel rendered the criminal proceeding fundamentally unfair, and the Supreme Court reversed for a new trial. St. v. Jefferson, 2003 MT 90, 315 M 146, 69 P3d 641 (2003).

Implied Attorney-Client Relationship — Motion for Disqualification of Attorney — Client's Burden of Showing Reasonable Belief That Attorney-Client Relationship Exists: Defendant telephoned attorney Penwell's office and spoke to the legal secretary regarding possible representation in this action, but never spoke personally to Penwell. Defendant was informed that Penwell was accepting no new cases and was referred to another attorney. Penwell ultimately appeared as counsel for plaintiff, and defendant moved to disqualify Penwell, asserting that confidential information was disclosed during the telephone conversation with the secretary and that the information was imputed to Penwell, creating an attorney-client relationship. At the hearing on the motion, defendant did not disclose what type of information was allegedly disclosed, relying on the conclusory statement that what was disclosed was confidential. The District Court denied the motion, holding that defendant had failed to meet the burden of conclusively establishing the existence of an attorney-client relationship. Defendant appealed, but the Supreme Court affirmed. Although an alleged client should not be required to reveal actual confidences at a disqualification hearing, the alleged client must at least inform the court of the nature of the information disclosed so that the court can make a reasoned judgment. Under the circumstances, defendant could not have reasonably believed that an attorney-client relationship was formed with Penwell, based upon two telephone conversations with the secretary, when defendant never spoke or met with Penwell, and was advised that Penwell would not take the case. Pro-Hand Serv. Trust v. Monthei, 2002 MT 134, 310 M 165, 49 P3d 56 (2002). See also Krutzfeldt Ranch, LLC v. Pinnacle Bank, 2012 MT 15, 363 Mont. 366, 272 P.3d 635.

Improper Grant of Motion to Dismiss Legal Malpractice Suit for Failure to State Claim Upon Which Relief Could Be Granted: Hauschulz faced criminal charges in Billings, and while awaiting trial, he was extradited to Idaho on unrelated charges and incarcerated. The Michael Law Firm was hired to represent Hauschulz in the Billings proceedings, which Hauschulz could not attend. Instead of moving for dismissal of the charges unless Montana extradited Hauschulz, the law firm professed not to know where Hauschulz was and negotiated an unauthorized plea agreement on behalf of Hauschulz. Upon learning of the law firm's actions, Hauschulz filed a legal malpractice complaint alleging constitutional violations and requesting damages. The District Court dismissed the action on grounds that Hauschulz had failed to state a claim upon which relief could be granted, reasoning that no damages could be awarded because Hauschulz's problems all stemmed from the failure to appear at trial. Hauschulz appealed, and the Supreme Court reversed. A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief, and a dismissal will be affirmed by the Supreme Court only if plaintiff is not entitled to relief under any set of facts that would support the claim. As set out in Merzlak v. Purcell, 252 M 527, 830 P2d 1278 (1992), to recover damages in a legal malpractice claim, plaintiff must establish that: (1) the professional owed plaintiff a duty of care; (2) the professional breached the duty of care through failure to use reasonable care and skill; (3) plaintiff suffered an injury; and (4) the professional's conduct was the proximate cause of the injury. In this case, the Supreme Court found that each element was satisfied. Hauschulz might be able to prove a set of facts that would entitle him to relief and has stated a sufficient claim to survive a challenge under former Rule 12(b), M.R.Civ.P. (now superseded). Hauschulz v. Michael Law Firm, 2001 MT 160, 306 M 102, 30 P3d 357 (2001). See also Trankel v. St., 282 M 348, 938 P2d 614 (1997).

Failure to Show That but for Negligent Legal Advice, Deportation Could Have Been Successfully Defended — Professional Negligence Claim Properly Dismissed: Fang, a Chinese citizen and lawful permanent United States resident employed by Montana State University-Bozeman, was involved in a domestic dispute with his wife that resulted in charges of assault. Fang consulted Bock, who worked at the university legal services offices, regarding the possibility of deportation. Bock in turn consulted Rice, an attorney who had made a presentation on immigration law at a seminar that Bock had attended, and asked if a misdemeanor domestic abuse charge was grounds for deportation. Rice informed Bock that the federal Immigration and Naturalization Service (INS) would not initiate deportation proceedings until the commission of two misdemeanors. Bock relayed that information to Fang, who relied at least in part on the information and pleaded guilty to family member assault. However, in 1996, Congress enacted a new immigration statute (see 8 U.S.C. 1227(a)(2)(E)(i)) that provides that domestic violence convictions are deportable offenses. Several weeks after pleading guilty, Fang received a notice to appear and face deportation. After hiring new counsel, Fang moved to withdraw the guilty plea. The District Court granted the motion on grounds that the failure of Bock to inform Fang of the possibility of removal to China constituted ineffective assistance of counsel, and the INS agreed to suspend further proceedings until the resolution of charges against Fang. Based on the advice of his new counsel, Fang reached a plea agreement with the Gallatin County Attorney to plead guilty to an amended charge of assault. Following conviction, the INS again moved to deport Fang, and based on the fact that assault also constitutes a crime of violence against a protected person pursuant to federal immigration law, Fang was ordered to be deported. Fang then filed a complaint against Bock, seeking damages for professional negligence and negligent supervision and treble damages under 37-61-406. The District Court applied Lorash v. Epstein, 236 M 21, 767 P2d 1335 (1989), and determined that Fang could not satisfy the last element of the test for a prima facie case of professional negligence, which requires a showing that but for such negligence, Fang would have successfully defended against the offense. The court then summarily dismissed the case. Fang appealed, contending that because of Bock's advice, he was exposed to the possibility of removal from this country and had to spend substantial amounts of money to avoid that exposure. Pursuant to Lorash, the Supreme Court had to determine whether Fang would have been exposed to the possibility of removal from this country with or without Bock's advice, in light of the offenses to which Fang pleaded guilty, the statutory basis for deportation, and the immigration judge's explanation for the deportation order. Under either charge, Fang was guilty of an offense of violence against a protected person—his wife. The title of the offense was irrelevant because for purposes of immigration law, misdemeanor assault is considered just as much a crime of violence against a spouse as family member assault. Further, Fang's argument that a different result was compelled by the fact that the assault conviction was subsequently expunged based on a deferred prosecution also failed because under federal case law, no effect is to be given to a state action that purports to remove a guilty plea or conviction by operation of a state rehabilitative statute. Thus, Fang's situation was a result of the conduct that he admitted and was the same following correct legal advice as it was following Bock's incorrect advice. Although Bock misinformed Fang, that advice did not lead to Fang's predicament, nor would the money that he spent to have the first conviction set aside have changed the result. Fang could not prove that but for negligent legal advice he could have avoided deportation, and Bock was entitled to judgment as a matter of law. Fang v. Bock, 2001 MT 116, 305 M 322, 28 P3d 456 (2001).

In-House Counsel Not Precluded From Bringing Wrongful Discharge From Employment Claim Even if Proof of Claim Requires Disclosure of Confidential Information: Burkhart was hired as in-house counsel for Semitool, Inc. (Semitool). Following his discharge from employment, Burkhart sued Semitool for wrongful discharge. The District Court concluded that even though Burkhart had a right to protection against wrongful discharge, Semitool also had a right to protection of its trade secrets and that because the rights conflicted, the attorney-client privilege must prevail. The court dismissed Burkhart's claim on grounds that he was precluded from bringing an employment claim because, as staff counsel hired to provide legal advice or services, proof of the claim would require disclosure of confidential matters. Burkhart maintained on appeal that the Wrongful Discharge From Employment Act applied to any employee and that there was no exclusion for attorneys. Semitool argued that because Art. VII, sec. 2, Mont. Const., gives the Supreme Court sole authority to regulate the conduct of lawyers, the Act is unconstitutional to the extent that it interferes with that authority. Semitool also cited Campbell v. Bozeman Investors of Duluth, 1998 MT 204, 290 M 374, 964 P2d 41 (1998), for the "universal rule" that clients may fire lawyers at any time, for any reason, with or without cause and that for that reason, application of the Act to the employment relationship of staff attorneys and the client employer was not proper. In a case of first impression, the Supreme Court examined two lines of cases from other jurisdictions that appeared to support either conclusion. The court then concluded that the reasoning and analysis in Gen. Dynamics Corp. v. Superior Court, 876 P2d 487 (Calif. 1994), and its progeny were the more sound and realistic approach. The holding in Campbell does not create an absolute right to discharge an attorney with complete impunity no matter the form of the attorney-client relationship. The universal rule does not apply in an attorney-client relationship in which the attorney is the employee of the client because in that context, the client has avoided the traditional relationship and granted the attorney protections that do not apply to independent contractors, but do apply to employees, including the Wrongful Discharge From Employment Act. Further, although Art. VII, sec. 2, Mont. Const., gives the Supreme Court sole authority to regulate the conduct of lawyers, the court does not have sole authority to regulate employer conduct. The Act pertains solely to employer conduct and does not implicate the conduct of lawyers in the practice of law, and thus, it is not an unconstitutional encroachment on the court's authority for the Act to apply to lawyers as employees or employers. Further, Rule 1.6 of the Montana Rules of Professional Conduct contemplates that a lawyer may reveal confidential attorney-client information to the extent that the lawyer reasonably believes necessary to establish an employment-related claim against an employer who is also a client. Thus, the plain language of the Wrongful Discharge From Employment Act requires courts to recognize an in-house counsel's right to pursue and maintain an action for wrongful discharge, and those claims are within the contemplation of the rules of professional conduct for attorneys. A lawyer does not forfeit rights simply because confidential information must be used to prove them, nor may a client gain the right to cheat the lawyer by imparting confidences. Burkhart v. Semitool, Inc., 2000 MT 201, 300 M 480, 5 P3d 1031, 57 St. Rep. 785 (2000). See also Doe v. A Corp., 709 F2d 1043 (5th Cir. 1983).

Insurer-Imposed Billing Rules and Procedures Violative of Rules of Professional Conduct: When presented with the question of whether an attorney licensed to practice in Montana or admitted pro hac vice may agree to abide by an insurer's billing and practice rules that impose conditions limiting or directing the scope and extent of representation of the attorney's client, the insured, the Supreme Court considered the requirement imposed by some insurers that defense counsel secure the consent of the insurer's claim professional before proceeding with the case, in order to ensure adequate consultation. Insurers cited Jessen v. O'Daniel, 210 F. Supp. 317 (D.C. Mont. 1962), for the proposition that under Montana law, in the absence of a real conflict, the insurer and the insured are dual clients of defense counsel, arguing that as co-client of defense counsel, the insurer may require preapproval of attorney activities. The Supreme Court noted that although decisions subsequent to Jessen recognized the conclusion that an insurance contract may place absolute control of litigation in the hands of the insurer, the dual representation doctrine is not recognized under the Rules of Professional Conduct, but applies only in determining whether the communications between an insurer and its attorneys are subject to the attorney-client privilege. The contractual relationship between insurer and insured does not supersede or waive defense counsels' obligations under the Rules of Professional Conduct. Rather, the Rules of Professional Conduct have application in all cases involving attorneys and clients, and under the rules, the insured is the sole client of defense counsel. The court concluded that defense counsel in Montana who submit to the requirement of prior approval from the insurer violate the Rules of Professional Conduct by fundamentally interfering with their duties to exercise independent judgment and to give their undivided loyalty to insureds. The court noted that the prior approval requirement also creates a substantial appearance of impropriety by suggesting that the insurer, rather than defense counsel, controls the day-to-day details of the defense. In re Rules of Professional Conduct & Insurer Imposed Billing Rules & Procedures, 2000 MT 110, 299 M 321, 2 P3d 806, 57 St. Rep. 433 (2000).

Requirement That Attorney Submit Detailed Descriptions of Services Violative of Client Confidentiality: When presented with the question of whether an attorney licensed to practice in Montana or admitted pro hac vice may be required by an insurer's billing and practice rules to submit detailed descriptions of professional services to outside persons or entities, such as third-party insurance auditors, without first obtaining the informed consent of the client, insurers cited U.S. v. Mass. Institute of Technology, 129 F3d 681 (1st Cir. 1997), in claiming that as agents of insurers, third-party auditors are part of a privileged community or magic circle within which confidential information may be shared without waiver of attorney-client privilege or work product doctrine. The insurers also cited Indian Law Resource Center v. Dept. of Interior, 477 F. Supp. 144 (D. D.C. 1979), for the proposition that an auditor is a confidential agent of a privileged party, so disclosure of attorney fee information did not waive any privilege. The Supreme Court found neither case persuasive, concluding that third-party auditors are not confidential agents of insureds, but function rather as agents of insurers, and thus are not within the magic circle of confidentiality. Rather, disclosure of detailed billing statements to third-party auditors constitutes disclosure to a potential adversary because there is always the possibility of disputes between auditors and defense counsel and their clients that could result in litigation. As possible adversaries, auditors stand in potential conflict with the interests of insureds in competent representation by defense counsel who exercise their independent professional judgment. The court looked to Rule 1.6 of the Rules of Professional Conduct, which extends to all communications between insureds and defense counsel, making it broader in both scope and protection than the attorney-client privilege and the work product doctrine. Although disclosures of billing information to insurers are permissible because insurers are impliedly authorized to carry out representation, disclosure to third-party auditors is not impliedly authorized. The court also rejected the insurers' argument that insureds' consent by contract to disclosure of billing statements comports with Rule 1.6. An insured executing a liability policy with an insurer cannot know at that time what kind of claim will be brought against that insured, what the issues will be, what kind of services will be undertaken by defense counsel, or the legal consequences that might result from the disclosure of billing information to a third-party auditor. Under Rule 1.6, for an insured to make a fully informed consent to disclosure of detailed billing statements, the consent must be contemporaneous with the facts and circumstances of which the insured should be aware. Thus, disclosure by defense counsel of detailed descriptions of professional services to third-party auditors without first obtaining the informed consent of the insured violates confidentiality under the Rules of Professional Conduct. In re Rules of Professional Conduct & Insurer Imposed Billing Rules & Procedures, 2000 MT 110, 299 M 321, 2 P3d 806, 57 St. Rep. 433 (2000), distinguishing U.S. v. Schwimmer, 892 F2d 237 (2nd Cir. 1989).

Disqualification of Attorney's Firm Upon Disqualification of Attorney: Once an attorney is found to be disqualified, such as for previous representation of an adverse party, the attorney's firm is also disqualified. In re Guardianship of Mowrer, 1999 MT 73, 294 M 35, 979 P2d 156, 56 St. Rep. 300 (1999), following Trone v. Smith, 621 F2d 994 (9th Cir. 1980).

No Duty of Attorney to Nonclient in Child Custody Case: An attorney must be able to vigorously advocate a client's interests in litigation without being compromised by obligations to nonclients. If an attorney were considered to owe the same duty of care to both a parent and child in an adversarial custody case, neither parent nor child would be served effectively. Because the interests of a parent and those of a child may not be identical, the attorney's duty runs solely to the client except if the conduct rises to the level of deceit or collusion or is intentionally reckless. Rhode v. Adams, 1998 MT 73, 288 M 278, 957 P2d 1124, 55 St. Rep. 303 (1998). See also Redies v. Attorneys Liability Protection Soc'y, 2007 MT 9, 335 M 233, 150 P3d 930 (2007).

Attorney Fees Awardable — Contractual Obligation — Nominal Damages: The District Court erred by not awarding attorney fees to the prevailing plaintiff, even though plaintiff recovered only nominal damages, when the record on appeal does not support the court's decision. Maloney v. Heer, 257 M 500, 850 P2d 957, 50 St. Rep. 382 (1993).

Representation of Client Adverse to Former Client After Professional Relationship Terminated: In determining whether a claim for attorney malpractice existed based on an attorney's representation of an adverse client against a former client, the Supreme Court cited Butler Bros. Dev. Co. v. Butler, 111 M 329, 108 P2d 1041 (1941), in holding that while the general rule prohibits an attorney from representing both adverse parties, it does not bar an attorney, when the relationship to the former party has been terminated, from representing a client adverse to the former client if the matter in controversy is different or even though the controversy arises out of facts with which the attorney might have been familiar. Before the former client can complain, he must show that the disclosures made in the former employment were used prejudicially against him. Oar Lock Land & Cattle Co. v. Crowley, 253 M 336, 833 P2d 146, 49 St. Rep. 456 (1992), followed in In re Guardianship of Mowrer, 1999 MT 73, 294 M 35, 979 P2d 156, 56 St. Rep. 300 (1999).

Failure to Establish Attorney-Client Relationship: The plaintiff brought an action for attorney malpractice on his own behalf. The Supreme Court found that the plaintiff was a shareholder of the corporation that the defendant had allegedly misrepresented. The court ruled that no attorney-client relationship existed between shareholders of a corporation and an attorney representing the corporation. Stott v. Fox, 246 M 301, 805 P2d 1305, 47 St. Rep. 2040 (1990).

No Recovery for Attorney Malpractice Without Proving Damages: The Supreme Court found that the plaintiff was not entitled to damages from the defendant for malpractice because the plaintiff had no valid cause of action upon which he could have recovered in the suit the plaintiff had hired the defendant to handle. Kinniburgh v. Garrity, 244 M 350, 798 P2d 102, 47 St. Rep. 1655 (1990), followed in Kane v. Miller, 258 M 182, 852 P2d 130, 50 St. Rep. 488 (1993).

No Recovery for Failure to Timely File Appeal Without Proof of Damage to Client: The Supreme Court determined that the plaintiff had no valid cause of action upon which he could recover in the suit the plaintiff had hired the defendant to handle. Therefore, the court ruled that the defendant's failure to timely file an appeal did not damage the plaintiff. Kinniburgh v. Garrity, 244 M 350, 798 P2d 102, 47 St. Rep. 1655 (1990).

Attorney as Expert Witness — Not to Advise Jury as to Law of Case: Insurance company argued that the District Court's instructions implying that company's position was frivolous as a matter of law were reinforced by detailed attorney opinion testimony on the law applicable to insurance coverage, in violation of 25-7-102 and Rule 704, M.R.Ev. (Title 26, ch. 10). The Supreme Court, citing Energy Oils, Inc. v. Mont. Power Co., 626 F2d 731 (9th Cir. 1980), adopted the finding that admission of opinion testimony as to the legal effect of a contract is erroneous, but in view of the District Court holding that there was insurance coverage as a matter of law, the Supreme Court concluded that counsel's testimony regarding the law of the case did not constitute reversible error under the unique facts of this case. The court found no abuse of discretion in allowing attorneys who appear as expert witnesses to state their opinion on an insurer's duty to evaluate the facts, on what constitutes a reasonable evaluation of the facts, or on how an insurer should have approached the negotiations with the plaintiff; however, as a general rule an attorney cannot advise the jury as to the law of the case. Safeco Ins. Co. v. Ellinghouse, 223 M 239, 725 P2d 217, 43 St. Rep. 1689 (1986).

Neglect of Attorney Attributable to Client: When defendant's attorney received notices and talked on the phone on behalf of his clients but failed to do anything in response to numerous requests by opposing counsel and continued to postpone preparation and filing of a pleading, the attorney's procrastination was a type of neglect which was properly attributable to a client and did not constitute abandonment, which would excuse neglect. The Supreme Court found no abuse of discretion in District Court's conclusion that the attorney's conduct was not excusable neglect. Paxson v. Rice, 217 M 521, 706 P2d 123, 42 St. Rep. 1355 (1985).

No Conflict of Interest: There was no conflict of interest for an attorney appointed to represent the child in a proceeding for modification of custody when the attorney occupied an office that had formerly been shared by the attorney representing the father and the judge presiding over the case (before he became a judge). In re Marriage of Stout, 216 M 342, 701 P2d 729, 42 St. Rep. 856 (1985).

Attorney's Obligation to Deal in Good Faith: Because of the inequality that exists between attorney and client in bargaining over a fee, attorney has an obligation to deal fairly and in good faith when negotiating, charging, and collecting a fee. In a fee dispute over handling of dissolution, client pleaded sufficient facts to raise question whether there was a breach of the obligation owed to deal fairly and in good faith. District Court erred in granting summary judgment for attorney. Supreme Court reversed and remanded for trial, giving client leave to amend counterclaim to specifically describe a breach of the implied covenant. Morse v. Espeland, 215 M 148, 696 P2d 428, 42 St. Rep. 251 (1985).

37-61-401. Authority of attorney.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

General 1197
Stipulations and Agreed Statements 1200

GENERAL

Loss of Video Footage — Improper Finding That Statements in Brief Opposing Sanctions for Spoliation of Evidence Did Not Constitute Judicial Admissions: The plaintiff requested that a store manager retain footage of her fall at the store the previous day. The plaintiff filed a negligence claim against the defendant related to the fall and, upon learning that the video footage had been erased, filed a motion for discovery sanctions. In its brief opposing sanctions, the defendant agreed with some of the plaintiff's statements regarding the content of the footage. During trial, however, the defendant made arguments about the video footage that contradicted those made in its earlier brief. The plaintiff appealed the District Court's decision, arguing that the statements in the defendant's brief constituted judicial admissions and that the District Court abused its discretion when it did not treat those statements as judicial admissions at trial. The Supreme Court ruled that the statements in the brief were judicial admissions and remanded the case for a new trial. Bilesky v. Shopko Stores Operating Co., LLC, 2014 MT 300, 377 Mont. 58, 338 P.3d 76.

Scriveners' Error — Statement in Brief Not Considered Judicial Admission — No Abuse of Discretion: The defendant sought dismissal of a negligence claim on the grounds that the plaintiff made an admission in a trial brief indicating that the defendant's actions were "reasonable and necessary". The day after the defendant sought dismissal, the plaintiffs filed a notice of errata to correct the alleged "scriveners' error", and the District Court denied the defendant's motion to dismiss the claim. On appeal, the Supreme Court distinguished Kohne v. Yost, 250 Mont. 109, 818 P.2d 360 (1991), and held that the District Court did not abuse its discretion in determining that the statement did not constitute a judicial admission. Weaver v. St., 2013 MT 247, 371 Mont. 476, 310 P.3d 495. However, see Bilesky v. Shopko Stores Operating Co., LLC, 2014 MT 300, 377 Mont. 58, 338 P.3d 76, in which the Supreme Court ruled that statements made in pretrial briefing constituted judicial admissions, warranting a new trial.

Dual Representation of Two Adverse Clients Violative of Rules of Professional Conduct — Censure and Costs Appropriate: Johnson's firm agreed to represent a woman in a wrongful death action and, a few months later, determined that a second client was a potentially responsible party and filed a complaint against the second client while still representing that client on other matters. The Commission on Practice concluded that Johnson violated the Rules of Professional Conduct by undertaking dual representation of two directly adverse clients and recommended Johnson's public censure and required Johnson to pay a pro rata share of costs. Johnson appealed, asserting: (1) a reasonable belief that dual representation would not adversely affect the relationship with the second client; (2) no intentional or negligent violation of the Rules of Professional Conduct; (3) an absence of selfish or dishonest motive; (4) that both clients actively sought representation from Johnson's firm; (5) the desire to serve the needs of both clients; (6) a reputation for good character and high competence as an attorney, including practicing law for over 30 years without any prior Commission disciplinary record; and (7) a delay in bringing and processing disciplinary proceedings. The Supreme Court affirmed. It was untenable for Johnson to contend that no conflict of interest existed in asserting on the woman's behalf that the second client negligently caused the death of the woman's husband. Johnson also failed to obtain the informed consent of the second client regarding representation of the woman. The court also noted that nothing in the Rules of Professional Conduct implies that a lawyer has to knowingly violate the rules to be subject to discipline. After considering the mitigating factors, the court agreed that censure and payment of costs were appropriate. In re Johnson, 2004 MT 6, 319 M 188, 84 P3d 637 (2004), followed in In re Wenz, 2004 MT 7, 319 M 200, 87 P3d 376 (2004), and In re Marra, 2004 MT 8, 319 M 213, 87 P3d 384 (2004).

Implied Attorney-Client Relationship — Motion for Disqualification of Attorney — Client's Burden of Showing Reasonable Belief That Attorney-Client Relationship Exists: Defendant telephoned attorney Penwell's office and spoke to the legal secretary regarding possible representation in this action, but never spoke personally to Penwell. Defendant was informed that Penwell was accepting no new cases and was referred to another attorney. Penwell ultimately appeared as counsel for plaintiff, and defendant moved to disqualify Penwell, asserting that confidential information was disclosed during the telephone conversation with the secretary and that the information was imputed to Penwell, creating an attorney-client relationship. At the hearing on the motion, defendant did not disclose what type of information was allegedly disclosed, relying on the conclusory statement that what was disclosed was confidential. The District Court denied the motion, holding that defendant had failed to meet the burden of conclusively establishing the existence of an attorney-client relationship. Defendant appealed, but the Supreme Court affirmed. Although an alleged client should not be required to reveal actual confidences at a disqualification hearing, the alleged client must at least inform the court of the nature of the information disclosed so that the court can make a reasoned judgment. Under the circumstances, defendant could not have reasonably believed that an attorney-client relationship was formed with Penwell, based upon two telephone conversations with the secretary, when defendant never spoke or met with Penwell, and was advised that Penwell would not take the case. Pro-Hand Serv. Trust v. Monthei, 2002 MT 134, 310 M 165, 49 P3d 56 (2002). See also Krutzfeldt Ranch, LLC v. Pinnacle Bank, 2012 MT 15, 363 Mont. 366, 272 P.3d 635.

Disqualification of Attorney's Firm Upon Disqualification of Attorney: Once an attorney is found to be disqualified, such as for previous representation of an adverse party, the attorney's firm is also disqualified. In re Guardianship of Mowrer, 1999 MT 73, 294 M 35, 979 P2d 156, 56 St. Rep. 300 (1999), following Trone v. Smith, 621 F2d 994 (9th Cir. 1980).

Authority of Attorney to Represent Client in Second Count of Two-Count Information When Severance of Counts Denied: Stanko was charged with two counts of reckless driving and represented himself on one of the two counts and was represented by counsel on the other. Early in the proceedings, Stanko moved for severance of the two counts for purposes of trial, but the request was denied. Later, the state requested a continuance of the charge for which Stanko was represented by counsel because of the illness of a witness, and Stanko's counsel consented. Stanko argued on appeal that his attorney had no authority to consent to continuance of the charge on which Stanko was representing himself. The Supreme Court held that Stanko's argument was "without merit" and explained that because severance had already been requested and denied, if trial on one of the counts was continued, the trial on the other count would also be continued. More important, the Supreme Court noted, Stanko failed to allege that he was prejudiced in any way by the continuance of the trial on the count for which he represented himself and it was disingenuous for Stanko to argue that the trial on that count should have been held as originally scheduled when Stanko submitted several motions 2 days before the trial date and the state would have had to request a continuance to respond to those motions even if the witness had not become ill. St. v. Stanko, 1998 MT 323, 292 M 214, 974 P2d 1139, 55 St. Rep. 1313 (1998).

Death of Defendant in Criminal Case Abates Case Entirely — Prior Cases Clarified: Holland was convicted in District Court of criminal syndicalism by accountability and other offenses and appealed his conviction. Holland died after the case had been briefed to the Supreme Court but before it was decided, so the state moved to dismiss. Holland's counsel opposed the motion to dismiss, arguing that it was in the best interests of society and the judicial system to allow the appeal to be decided on its merits. The Supreme Court noted that its earlier opinions in the cases of St. v. Lawrence, 122 M 277, 201 P2d 756 (1949), St. v. Pichette, 125 M 327, 237 P2d 1076 (1951), St. v. Hale, 128 M 116, 270 P2d 993 (1954), St. v. Koble, 129 M 605, 285 P2d 837 (1955), St. v. Clark-Kotarski, 156 M 527, 486 P2d 876 (1971), and St. v. Cripps, 177 M 410, 582 P2d 312 (1978), all held that the death of a defendant abates an appeal. The Supreme Court pointed out that subsection (2) of this section requires that a civil case go forward notwithstanding the death of a party but that in criminal cases, no case or controversy remains when a defendant dies and that if a deceased defendant's sentence were affirmed on appeal, it would be impossible to execute the sentence. The Supreme Court also noted, citing State ex rel. Fletcher v. District Court, 260 M 410, 859 P2d 992 (1993), that it does not render advisory opinions and that the Montana Rules of Appellate Procedure provide for substitution of a personal representative in the case of the death of a party in a civil action, but there is no such provision for criminal cases. The Supreme Court held that upon the death of the defendant, the prosecution of a criminal case, including fines, abates in its entirety. The Supreme Court's prior opinions were clarified to the extent that opinions in those cases were not consistent with its present opinion. St. v. Holland, 1998 MT 67, 288 M 164, 955 P2d 1360, 55 St. Rep. 282 (1998).

Client Bound by Attorney's Waiver of Right to Speedy Trial — Purpose of Statute: After defendant's attorney orally waived defendant's rights to a speedy trial in Justice's Court, defendant argued in his trial de novo appeal to District Court that he, the defendant, was not bound by his attorney's waiver. Defendant asserted that 37-61-401 makes the waiver binding only if it was entered with the defendant's knowledge or upon the record in open court. Citing Bush v. Baker, 46 M 535, 129 P 550 (1913), the Supreme Court ruled that this section has been applied only as to agreements between attorneys and that the purpose of that section is to relieve the presiding judge of the burden of determining disputes between attorneys concerning their unexecuted agreements. The Supreme Court stated that it would not apply this section literally as to agreements between an attorney and the court; to do so would lead to absurd consequences and greatly retard the business of the courts. The Supreme Court held that the defendant was thus bound by his counsel's waiver. St. v. Nelson, 251 M 139, 822 P2d 1086, 48 St. Rep. 1129 (1991).

Statements of Counsel as Binding on Client — New Trial Warranted: In closing arguments during a negligence trial that resulted in a jury finding of no negligence on behalf of defendant, defense counsel made unequivocal statements which, when taken in full context with the rest of his closing argument, constituted judicial admissions on the issue of negligence of his client that had the effect of a confessory pleading. Noting that the admissions of counsel are binding on the client, the Supreme Court granted a new trial, notwithstanding counsel's assertion that the statements were merely suggestions on the theory of the case. Kohne v. Yost, 250 M 109, 818 P2d 360, 48 St. Rep. 886 (1991), distinguished in Weaver v. St., 2013 MT 247, 371 Mont. 476, 310 P.3d 495. See also Bilesky v. Shopko Stores Operating Co., LLC, 2014 MT 300, 377 Mont. 58, 338 P.3d 76, in which the Supreme Court ruled that statements made during pretrial briefing constituted judicial admissions, warranting a new trial.

Purpose of Statute: The purpose of subsection (1)(a) of this section is to enable an attorney to act on behalf of his client and make the attorney's action part of the record, not to bind clients irrevocably to any action the attorney enters upon the record. Schillinger v. Brewer, 215 M 333, 697 P2d 919, 42 St. Rep. 408 (1985).

Privilege Unavailable to Parties to Lawsuit Claiming Under a Deceased Client: The plaintiffs brought an action against their stepmother to collect the proceeds of their deceased father's life insurance policy, which had been paid to the defendant in accordance with the terms of the policy but contrary to the provisions of a divorce decree. The District Court did not err in relying upon attorney Sternhagen's deposition and file in the prior divorce proceedings between the deceased and his first wife in order to determine the true intentions of the deceased. Where both parties to a lawsuit claim under a deceased client, neither can assert the attorney-client privilege against the other. Herrig v. Herrig, 199 M 174, 648 P2d 758, 39 St. Rep. 1274 (1982).

Exclusive Representation by Attorney: A party having an attorney of record in an action must be heard in court through such attorney, and the court may not recognize anyone in the conduct or disposition of the case except the attorney of record therein, and even death of the party does not revoke the authority of his attorney of record. Endresse v. Van Vleet, 118 M 533, 169 P2d 719 (1946).

Authority of Attorney to Accept Settlement in Other Than Money: The agent has no implied authority to accept payment in anything but money; hence an attorney who is but the agent of his client, though authorized under this section to accept money in discharge of the client's claim, cannot by his retention of a draft payable to the client and to which a release was attached to be signed by him personally bind him to an agreement of settlement. Barbarich v. Chicago, Milwaukee, St. Paul & Pac. Ry., 92 M 1, 9 P2d 797 (1932).

Notice to Attorney as Notice to Client: Notice to the attorney of defendant in a divorce action of the setting of the cause for trial was notice to her, and therefore a new trial asked for on the ground that she herself did not have notice was properly refused. Davenport v. Davenport, 69 M 405, 222 P 422 (1924).

Authority of Attorney to Settle Case Not Implied — Void Judgment: An attorney, as such, has no authority to compromise a controversy of his client, no matter what may be the difficulties involved or however advantageous the result may be to the client. A general retainer in a case does not imply such authority, and if a compromise of the controversy be made, it must be made under special authority delegated for that purpose. Otherwise and in the absence of a ratification by the client, the compromise agreement as well as any judgment entered in pursuance of it is void at the option of the client. Harris v. Root, 28 M 159, 72 P 429 (1903).

STIPULATIONS AND AGREED STATEMENTS

Fraud Substantiated in Attorney's Handling of Probate Case — Violation of Attorney's Duty of Truthfulness — Public Censure Warranted: Attorney Potts represented parties in a will contest. Two of the parties knew that some joint tenancy accounts were not included in the value of the estate and, in an attempt to secure the funds in the accounts, directed Potts to remain silent as to whether the settlement agreement prepared by Potts included the accounts. Potts failed to notify the court and counsel for the estate that one of his clients intended to obtain the jointly held property regardless of the outcome of any settlement. The Supreme Court subsequently determined in In re Estate of Stukey, 2004, MT 279, 323 M 241, 100 P3d 114 (2004), that the parties intended that the total estate value, including the joint tenancy accounts, be included in the settlement. A professional misconduct complaint was later filed against Potts, alleging that Potts engaged in or assisted in client fraud by failing to disclose material information to opposing counsel and that Potts breached the duty of candor to the tribunal by failing to disclose material information to the court. The Commission on Practice found that Potts knew that his clients were using Potts' services to perpetuate fraud in violation of Rules 1.2(d) and 3.3(a)(2) of the Montana Rules of Professional Conduct (MRPC), that Potts failed to fulfill his ethical obligation to inform the clients that he would not participate in the fraudulent conduct, a violation of Rule 1.2(d), MRPC, and that Potts violated the duty of candor to the tribunal in violation of Rule 3.3(a)(2), MRPC. The Commission recommended that Potts be publicly censured and suspended from the practice of law for 30 days. Potts appealed, raising issues of client confidentiality, asserting that his clients did not engage in fraud because the accounts passed to his client as a matter of law and thus could not have been included as part of the settlement basis, contending that he had no duty to correct opposing counsel's erroneous understanding of the settlement, and arguing that the Commission's proposed sanctions were inappropriate. The Supreme Court held that, by definition, Potts' clients were engaged in fraudulent conduct, that Potts assisted in the conduct by not disclosing the conduct to the court and to opposing counsel in violation of the duty of truthfulness and by drafting a stipulation stating that all disputes had been settled when he knew that the parties relied on a misrepresentation in drafting a settlement, and that Potts could have avoided the situation by withdrawing from representation. Potts' conduct resulted in considerable injury to the parties, requiring one District Court proceeding and two appeals to determine the meaning and scope of the stipulation. The Commission's findings were affirmed. However, the court reversed the suspension of Potts' practice in light of mitigating factors of Potts' history of compliance with the rules of professional conduct and his good character and reputation to this point and held that public censure sufficed to apprise Potts of the gravity of the misconduct. In re Potts, 2007 MT 81, 336 M 517, 158 P3d 418 (2007).

Attorney's Agreement to Settle Disputed Claim Binding Client Despite Attorney's Receipt of Funds or Filing With District Court — Estate of Goick Overruled: Following protracted litigation, the parties' attorneys agreed by telephone to settle a disputed claim, specifying a dollar amount and the preparation of a general release. Defendant's counsel prepared and faxed a release to plaintiff's counsel, who in turn replied by letter that the settlement terms were accepted. Defendant's counsel then prepared and signed a stipulation to dismiss the action and ordered a settlement check. About 2 weeks later, plaintiff's counsel advised that plaintiff refused to settle. Defendant's counsel moved to compel settlement, and the District Court granted the motion on the basis that plaintiff had agreed to the terms of the settlement. Plaintiff appealed, arguing that the settlement statement was only an attempt by counsel to reach an agreement that would then be forwarded to plaintiff for final agreement. However, plaintiff presented no evidence that counsel was not authorized to enter a settlement. Plaintiff also relied on subsection (1) of this section and on In re Estate of Goick, 275 M 13, 909 P2d 1165 (1996), for the proposition that he was not bound by the settlement because the agreement was not filed with the Clerk of Court or entered in the court's minutes. The Supreme Court affirmed. The literal interpretation of subsection (1)(a) of this section in Goick was inconsistent with prior case law and would preclude an attorney from binding a client to a settlement agreement, although subsection (1)(b) of this section would allow an attorney to discharge a claim or acknowledge satisfaction of judgment once the attorney received money. Precluding an attorney from binding a client to a settlement unless the attorney received funds does not make sense and is an absurd result. The Supreme Court therefore overruled that portion of Goick stating that a client is not bound to a settlement agreement unless the agreement is filed with the District Court or entered in the court's minutes. Lockhead v. Weinstein, 2003 MT 360, 319 M 62, 81 P3d 1284 (2003), following Hetherington v. Ford Motor Co., 257 M 395, 849 P2d 1039 (1993), which was distinguished in Murphy v. The Home Depot, 2012 MT 23, 364 Mont. 27, 270 P.3d 72.

Oral Estate Settlement Agreement Not Binding: An estate settlement agreement reached by the parties' attorneys over the telephone was not binding on the parties because the agreement was not in writing and was not filed with the Clerk of Court or entered upon the minutes of the court. In re Estate of Goick, 275 M 13, 909 P2d 1165, 53 St. Rep. 12 (1996), overruled, to the extent that a client is not bound to a settlement agreement unless the agreement is filed with the District Court or entered in the court's minutes, in Lockhead v. Weinstein, 2003 MT 360, 319 M 62, 81 P3d 1284 (2003).

Attorney's Stipulation as Waiver of Client's Right to Discovery or Jury Trial: Defendants argued that they should not be bound by their attorney's stipulation that a show cause hearing be a trial on the merits. The Supreme Court held that a client is bound by stipulations of his attorney if the agreement is entered upon the minutes of the court, regardless of whether or not the client had an opportunity to discuss the matter with his attorney beforehand. The stipulation voluntarily waived any right to discovery or to a jury trial or any other rights defendants claim to have lost. Daniels v. Dean, 253 M 465, 833 P2d 1078, 49 St. Rep. 535 (1992).

Ratification Through Acquiescence in Settlement Agreement: Appellant's knowledge of the terms of a settlement agreement and his acquiescence in the agreement for a period of nearly 2 years constitute a ratification of the settlement and dismissal, under the rulings of McGinley v.

Md. Cas. of Baltimore, 85 M 1, 277 P 414 (1929), and Harris v. Root, 28 M 159, 72 P 429 (1903). Webb v. First Nat'l Bank of Hinsdale, 219 M 160, 711 P2d 1352, 42 St. Rep. 1919 (1985).

Judgment — Setoff Based on Stipulation: Plaintiff received a judgment against defendant. Defendant appealed, and the appeal was dismissed with prejudice when defendant advised the court that defendant did not wish to proceed with it. Defendant then filed a motion for a set off of an amount that plaintiff and defendant were both liable to pay to a third party. Defendant's attorney and plaintiff's attorney had entered into a stipulation that plaintiff was primarily liable and defendant secondarily liable for that amount and that if defendant paid it, the payment would be set off against any judgment granted plaintiff against defendant. The lower court properly set off that amount as partial satisfaction of the judgment. Although the motion was not made within the time required by the rules, it was properly considered because the Clerk of Court did not give defendant notice of entry of the judgment against defendant; therefore, the time for filing the motion had not commenced to run, since the motion was to be made within a certain time from the notice of entry of judgment. AAR Constr., Inc. v. Fergus Elec. Co-op., Inc., 215 M 102, 695 P2d 819, 42 St. Rep. 214 (1985).

Attorney-Client Relationship: A client is bound by stipulations made by counsel entered in open court. Counts v. Chapman, 180 M 102, 589 P2d 151, 36 St. Rep. 89 (1979).

Authority of Attorney to Make Agreed Statement of Facts: Under this section an attorney has implied authority to bind his client by entering into an agreed statement of facts upon which the case is to be tried; but independent of such statute, the presumption is, in the absence of a showing to the contrary, that the attorney was acting within the scope of his authority in entering into the stipulation. Neglect of attorney to make proper inquiry into the facts before entering into the statement is the neglect of his client. Rieckhoff v. Woodhull, 106 M 22, 75 P2d 56 (1937).

Oral Stipulation for Time of Answer as Basis for Setting Aside Default: Little reliance is placed by courts upon oral agreements between counsel as to an extension of time within which an answer to a complaint might be filed as ground for setting aside a default. Stipulations of that nature should be in writing and filed or made in open court and entered in the minutes. St. Paul Fire & Marine Ins. Co. v. Freeman, 80 M 266, 260 P 124 (1927).

Authority of Attorney to Set Case for Trial — Common Law: Under the rule that if an attorney acts within the scope of his employment, express or implied, the client is bound, it is within the implied power of an attorney regularly employed in a criminal case to consent to the setting or continuance of the cause for trial. The provision of this section that an attorney has authority to bind his client "by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise" neither enlarges nor abridges the authority of the attorney as it existed under the common-law rule, but only prescribes a rule for its exercise. St. v. Turlok, 76 M 549, 248 P 169 (1926).

Stipulation to Set Case for Trial: An attorney has authority to enter a stipulation for the setting of a cause for trial, and his client is bound thereby. Davenport v. Davenport, 69 M 405, 222 P 422 (1924).

Oral Stipulations Not Prevented: This section was not designed to prevent the enforcement by the courts of executed oral agreements or stipulations admitted by the party or his attorney against whom they are alleged, although they were neither reduced to writing nor made in open court. Bush v. Baker, 46 M 535, 129 P 550 (1913); Beach v. Spokane Ranch & Water Co., 21 M 184, 53 P 493 (1898).

Rule of Court Inapplicable — Oral Stipulation Enforceable: A rule of the District Court that agreements between attorneys relating to causes pending will be disregarded by the court unless made in open court and entered in the minutes or reduced to writing, subscribed by the party or his attorney against whom they are urged, has no application to an executed oral agreement or stipulation admittedly entered into by an attorney. Such agreement binds the attorney, though he is inclined to repudiate it, where the client did not interfere or dissent. Bush v. Baker, 46 M 535, 129 P 550 (1913).

Evidence of Stipulation Required: An order of the District Court cannot be based upon a stipulation between the attorneys in the case where the stipulation is denied by one of the attorneys and it was neither made in writing nor made in open court and entered in the minutes. Beach v. Spokane Ranch & Water Co., 21 M 184, 53 P 493 (1898).

Attorney General's Opinions

County Attorney Not Authorized to Declare URESA Support Order Satisfied: This section authorizes a County Attorney to receive money, but it does not authorize him to declare a URESA support order satisfied. 41 A.G. Op. 7 (1985).

37-61-402. Production of proof of authority to court.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Minor Attaining Majority — Termination of Ward's Authority to Employ Counsel: Where a suit in behalf of a minor by his guardian had been properly instituted but the guardian's authority automatically terminated by the ward's attaining majority, the court, upon being advised, having inherent power to investigate an attorney's authority, should have stayed further proceedings until counsel for plaintiff was shown to have been reemployed by plaintiff and committed error in proceeding to adjudicate his rights, being without jurisdiction of the cause. Mitchell v. McDonald, 114 M 292, 136 P2d 536 (1943).

Motion to Show Authority: The court may, on motion of either party made in good faith and upon a showing supported by affidavit or otherwise, require the attorney of the adverse party to produce and prove the authority under which he appears and, if it be shown that the attorney has no such authority, dismiss the action. In re Astibia's Estate, 100 M 224, 46 P2d 712 (1935); Missoula Belt Line Ry. v. Smith, 58 M 432, 193 P 529 (1920).

Affidavit Not Required: A motion for an order requiring an attorney to show by what authority he appears in a cause, authorized by this section, need not be supported by oath or affidavit; if made in good faith and supported by a showing of reasonable cause otherwise than by affidavit, the motion will be sufficient. Union Bank & Trust Co. v. Penwell, 99 M 255, 42 P2d 457 (1935).

Dismissal of Appeal Taken Without Authority: Where it is shown that an attorney has no authority to represent the party for whom he assumes to act in taking an appeal, he will not be permitted to act further and the appeal will be dismissed. Union Bank & Trust Co. v. Penwell, 99 M 255, 42 P2d 457 (1935).

Presumption and Burden of Proof: The presumption that a regularly admitted attorney appearing for a party in a cause is authorized to so appear is not conclusive. The opposite party having reasonable cause to doubt the attorney's authority may apply to the court requiring him to show his authority. The burden of proving lack thereof by positive evidence rests upon the attacking party, whereupon, such burden being sustained, the burden shifts to the attorney to show his authority. Union Bank & Trust Co. v. Penwell, 99 M 255, 42 P2d 457 (1935).

Trustee as Attorney — Specific Authority for Appeal Required: Showing made by an attorney on an order requiring him to show by what authority he, as one of five statutory trustees of a dissolved corporation, was prosecuting an appeal to the Supreme Court from an order appointing a receiver for the corporation without the consent of his four cotrustees, to the effect that he had for many years represented the trust in legal matters with their consent and that he had so represented them in the action resulting in the appeal, was insufficient in the absence of proof that they had authorized him to take the appeal. Union Bank & Trust Co. v. Penwell, 99 M 255, 42 P2d 457 (1935).

Letter as Evidence to Support Order Requiring Authority to Be Shown: Where an attorney who was one of five statutory trustees of a dissolved corporation assumed to prosecute an appeal to the Supreme Court from an order appointing a receiver for the corporation made with the consent of the other four trustees, a motion of the bank at the instance of which the appointment was made and which was the party respondent on appeal, asking that the attorney prosecuting the appeal be required to show by whose authority he was acting, supported by a letter from each of the cotrustees to the effect that they had never authorized the appeal, presented a sufficient showing to justify the issuance of the order prayed for. Union Bank & Trust Co. v. Penwell, 99 M 255, 42 P2d 457 (1935).

Motion to Be Made in Trial Court: Where a defendant does not challenge in the trial court the authority of an attorney of his adversary to appear for him, in accordance with the provisions of this section, his right to question it later is waived. In re Miller's Estate, 71 M 330, 229 P 851 (1924), distinguished in Union Bank & Trust Co. v. Penwell, 99 M 255, 42 P2d 457 (1935).

Criminal Plea — Conditions Violated: Where defendant had entered a plea of guilty to the charge of illegal transportation of intoxicating liquor and later authorized his attorney to withdraw that plea and enter one of guilty on condition that the District Judge would agree to the imposition of a certain fine with the jail sentence suspended and the attorney entered an unconditional plea of guilty, he exceeded his authority and the court, under this section, erred in refusing to set aside the judgment pronounced on the latter plea. St. v. Dow, 71 M 291, 229 P 402 (1924).

Early Motion for Authority Required to Be Made: The motion requiring the attorney for the adverse party to produce his authority must be made at the earliest practicable time, otherwise the right may be considered to have been waived. Missoula Belt Line Ry. Co. v. Smith, 58 M 432, 193 P 529 (1920).

37-61-403. Change of attorney.

Case Notes

No Deprivation of Right to Counsel — Failure to Cooperate With Multiple Public Defenders — Order Granting Motion to Withdraw Not Required: After firing multiple public defenders, the defendant represented herself at trial and was convicted in Municipal Court of a handful of misdemeanors. On first appeal, the District Court determined that the Municipal Court made the appropriate balancing decision between the defendant's right to counsel and her refusal to work with everyone appointed to represent her. On final appeal, the Supreme Court held that it was within the Municipal Court's discretion to accept the defendant's decision to represent herself, and to the extent that the defendant did not expressly and unequivocally waive her right to counsel because her decision was inconsistent over time, she effectively did so by failing to cooperate with a series of court-appointed attorneys. Any procedural errors that may have occurred based on the Municipal Court's failure to act on an attorney's pending motion to withdraw did not deprive the defendant of her rights, as she informed the court that she desired to represent herself. Additionally, the Municipal Court took into consideration that the defendant had represented herself in a criminal proceeding in the past and that she was aware of the charges and possible penalties. Missoula v. Fogarty, 2013 MT 254, 371 Mont. 513, 309 P.3d 10.

Appointment of GAL and Conservator — Inability of Parents to Choose Counsel for Child: The custodial parents of a minor child appealed the District Court's order denying their motion to disqualify counsel for their child in a personal injury matter, arguing that they had the right to choose counsel over the opposition of the guardian ad litem (GAL) and conservator, that 37-61-403 and 72-5-427 were unconstitutional, and that 37-61-403 conflicts with the Montana Rules of Professional Conduct. The Supreme Court affirmed, concluding that once the parents consented to the appointment of a GAL and conservator, they divested themselves of the right to choose who would represent their child's personal injury claims. Assuming that the parents were clients under 37-61-403, their failure to comply with the statute by not securing consent of the attorney of record or applying to the District Court to change the attorney of record did not render the statute unconstitutional. Because the parents voluntarily consented to the appointment of the GAL and conservator and, thus, divested themselves of control over the child's legal action, their unhappiness with the decisions of the GAL and conservator did not render 72-5-427 unconstitutional. Rule 1.16, Montana Rules of Professional Conduct, and 37-61-403 work in conjunction: Rule 1.16 provides that an attorney shall withdraw from representation if discharged by a client and 37-61-403 provides the method for how discharge can be accomplished. In re Estate of C.K.O., 2013 MT 72, 369 Mont. 297, 297 P.3d 1217.

Change of Attorney After Death of Client: Attorney was authorized to represent deceased client for whom there was filed a praecipe signed by counsel indicating withdrawal of previous counsel and requesting entry of name of new attorney for deceased even though signed and filed by counsel after death of client. State ex rel. Ross v. District Court, 150 M 233, 433 P2d 778 (1967).

Notice of Change of Attorney Required: In the absence of any relation of the attorney to the subject of the action, other than arising from his employment, the client may change his attorney at any stage of the action by complying with the statute, but such change must be entered upon the minutes of the court or be upon order of the court after notice. Thereafter written notice must be given to the adverse party of the change and substitution of a new attorney or of the appearance of the party in person. Endresse v. Van Vleet, 118 M 533, 169 P2d 719 (1946), followed in Saltzman v. Dept. of Transportation, 259 M 386, 856 P2d 965, 50 St. Rep. 845 (1993).

Guardian Entitled to Choose Attorney: The guardian of an incompetent was absolutely entitled to have a different attorney substituted to represent him in place of the firm that had represented the incompetent prior to the appointment of the guardian, notwithstanding the fees due such firm had not been paid. State ex rel. Davis v. District Court, 30 M 8, 75 P 516 (1904).

Attorney General's Opinions

Authority of County Commissioners to Employ Private Attorney: A County Attorney may not unreasonably withhold his consent to the employment of another attorney by the Board of County Commissioners to perform legal services in connection with the civil business of the county. The decision of a County Attorney to withhold his consent is subject to the supervisory authority of the Attorney General. 41 A.G. Op. 34 (1985).

37-61-404. Notice of change.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-61-405. Death or removal of attorney.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Failure to Provide Notice to Codefendant — Reversible Error: The defendant was held vicariously liable for injuries her son caused during a tractor accident. Prior to a bench trial, the defendant's counsel withdrew as her attorney and noted that she was incompetent and required a conservator. The defendant argued on appeal that the plaintiffs failed to meet the notice requirements when her counsel withdrew his representation. The Supreme Court agreed, holding that the plaintiffs' failure to provide notice to the defendant under 37-61-405 constituted reversible error. Stewart v. Rice, 2013 MT 55, 369 Mont. 203, 296 P.3d 1174, following Quantum Elec., Inc. v. Schaeffer, 2003 MT 29, 314 Mont. 193, 64 P.3d 1026.

No Error in Disallowing Continuance Following Withdrawal of Counsel on Day of Trial: A dissolution trial was delayed multiple times over nearly 2 1/2 years following the husband's petition for dissolution, including three continuance requests by the husband. Only 2 weeks before trial, the husband dismissed his attorney, and his counsel withdrew on the scheduled trial date. Nevertheless, the trial court declined a motion by the husband for another continuance and instead proceeded to go through the basic requirements for dissolution and to get uncontested facts on the record, even though the husband declined to participate. The court then gave the husband the rest of the day to find an attorney, but he was not successful. The next day, the court again declined the husband's request for a continuance and proceeded to take testimony, although the husband was generally uncooperative when questioned by the wife's counsel. Following testimony, the court gave the husband 30 days in which to have a new attorney file an appearance and make any appropriate posttrial motions, but cautioned the husband that if he did not get counsel within a reasonable time, the court would make a decision based on the evidence before it. The husband eventually acquired new counsel, who filed a notice of appearance about 50 days after trial, but the husband filed no additional motions and provided the court with no additional evidence, and his new counsel had no further contact with the court or the wife's counsel. More than 3 months after trial, the court entered its decision and dissolution decree, and the husband appealed on grounds that the court erred by denying a continuance after his counsel withdrew on the day of trial. The Supreme Court affirmed. The husband's counsel did not withdraw without the client's consent, but rather was fired. Allowing a party to fire counsel and be granted a continuance on the day of trial would effectively place control of proceedings in the hands of the party rather than with the court and would result in an impermissible interruption in the functioning of the judicial system. By shortening the first day of trial so that the husband could seek new counsel and by granting 30 days after trial in which to obtain counsel and to notify the court of further motions or evidence, the trial court compensated for the counsel's withdrawal on the day of trial and provided adequate notice to the husband; thus, the trial court did not err in disallowing a further continuance. In re Marriage of Hardin, 2008 MT 154, 343 M 254, 184 P3d 1012 (2008), distinguishing Quantum Elec., Inc. v. Schaeffer, 2003 MT 29, 314 M 193, 64 P3d 1026 (2003), and followed in In re Guardianship of A.M.M., 2015 MT 250, 380 Mont. 451, 356 P.3d 474.

Withdrawal of Counsel — No Requirement That Party Provide Written Notice of Hearing Until Notice of Withdrawal of Counsel Filed: Defendant moved for sanctions and dismissal based on discovery abuses. Notice was sent to plaintiffs' counsel regarding a hearing on the motion, but plaintiffs' counsel had decided to withdraw. Although counsel mentioned the hearing to plaintiffs, plaintiffs failed to appear at the hearing, so defendant's motion was granted. No notice was filed with the court formalizing withdrawal of counsel until after the hearing. Plaintiffs' new counsel moved to set aside the judgment on grounds of mistake, surprise, and excusable neglect, asserting that defendant was required to notify plaintiffs in writing before the hearing, but the motion was denied, and plaintiffs appealed. The Supreme Court affirmed. Defendant was not required to provide written notice to plaintiffs until their former counsel filed a notice of withdrawal, and the rules of professional conduct prohibited defendant from contacting plaintiffs in person. Until the notice of withdrawal was filed, defendant was entitled to presume that plaintiffs' former counsel continued to provide representation and that plaintiffs had been properly notified of the hearing by counsel. Under these circumstances, denial of the motion to set aside the judgment was not an abuse of discretion. Flesch v. McDonald's Restaurant, 2005 MT 235, 328 M 407, 121 P3d 527 (2005).

Required Notice of Withdrawal of Counsel: When counsel for a party withdraws, in order to properly protect the interests of the unrepresented party, the opposing party, by written notice, must require the unrepresented party to appoint another attorney or appear in person, as provided in this section. The written notice must include the date of the next action required in the case and notice that if the unrepresented party fails to appoint an attorney or appear in person within 20 days from the date of notice, the action or other proceeding will proceed and may result in a judgment or other order being entered against the unrepresented party. Once proper notice is given, any continued refusal by the unrepresented party to participate in the proceedings may justly result in default judgment or other final judgment against that party's interests. Quantum Elec., Inc. v. Schaeffer, 2003 MT 29, 314 M 193, 64 P3d 1026 (2003), following McPartlin v. Fransen, 178 M 178, 582 P2d 1255 (1978), and Stanley v. Holms, 281 M 329, 934 P2d 196 (1997), and overruling Sikorski & Sons, Inc. v. Sikorski, 162 M 442, 512 P2d 1147 (1973), and Audit Serv., Inc. v. Kraus Constr., Inc., 189 M 94, 615 P2d 183 (1980), to the extent that Sikorski and Audit Serv. waived a failure of opposing counsel to comply with this section.

Notice Required When Counsel Withdraws — Discovery Deadline Tolled: Only 3 days before the deadline for answers to discovery requests, Holms's counsel moved to withdraw, citing irreconcilable personal and professional differences with Holms regarding handling of the case and a breakdown in attorney-client communication. Four days after the discovery deadline, Stanleys moved for summary judgment based to a great extent on matters considered admitted by Holms's failure to respond to requests for admissions pursuant to former Rule 36(a), M.R.Civ.P. (now superseded). Twelve days after the motion for summary judgment, the court heard and granted counsel's motion to withdraw. On the same day, Stanleys served Holms with confirmation of the court's oral instruction to Holms regarding Rule 10, M.U.D.C.R. (Title 25, ch. 19), and a notice of the hearing on the motion for summary judgment. Seven days before the hearing, Holms' new counsel agreed to undertake representation and the following day moved to amend the pleadings, to file amended responses to Stanleys' first discovery requests, and to continue Stanleys' motion for summary judgment. On the date set for hearing on the summary judgment, the court heard oral argument and granted Stanleys' motion about 3 months later. In its order, the court concluded that the 30-day deadline in former Rule 36(a) was not tolled because Rule 10, M.U.D.C.R., did not apply. However, pursuant to Rule 10, M.U.D.C.R., and this section, the opposing party with notice of the withdrawal of counsel has a duty to provide adequate notice to the unrepresented party when that party's attorney ceases to act as such, not just when the attorney dies or is removed, suspended, or actually withdraws, before taking advantage of a default on the part of the other side. The purpose of this notice requirement is to prevent a represented party from taking unfair advantage of the situation of the opposing party who has actually or effectively lost representation and to ensure that the unrepresented party receives a fair trial. The case was remanded for consideration of the motion to amend the pleadings and reconsideration of the summary judgment motion in light of the amended pleadings, the discovery responses, and the state of the record at the time that the motion for summary judgment is heard. Stanley v. Holms, 281 M 329, 934 P2d 196, 54 St. Rep. 195 (1997), following McPartlin v. Fransen, 178 M 178, 582 P2d 1255 (1978). On remand, the District Court did not abuse its discretion in conducting the summary judgment hearing and ruling on Stanley's motion for summary judgment without allowing Holms the opportunity to conduct further discovery. Stanley v. Holms, 1999 MT 41, 293 M 343, 975 P2d 1242, 56 St. Rep. 178 (1999), following Howell v. Glacier Gen. Assurance Co., 240 M 383, 785 P2d 1018, 46 St. Rep. 2216 (1989).

Case Stayed When Notice Not Served: A party was notified of the trial but did not attend, and his counsel had been given leave to withdraw. The record did not show that the party was served with the notice required by this section; therefore, the case against him was stayed, and judgment could not be granted until proper notice was served. McWilliams v. Clem, 228 M 297, 743 P2d 577, 44 St. Rep. 1536 (1987).

Attorney Withdrawal With No Notice to Client — Default Set Aside: The lower court granted defendants' attorney's motion to withdraw and ordered him to notify defendants. Defendants claimed on appeal that they received no notice. The record showed no evidence of notice by the attorney and no evidence of the notice that this section required plaintiff to give. A default was issued against defendants at a time when they had no attorney and were not represented at the hearing. Defendants properly raised on appeal the lack of the lower court's power to proceed to default. The case was remanded with directions to set the default aside and grant a rehearing. Mont. Bank of Roundup, N.A. v. Benson, 220 M 410, 717 P2d 6, 43 St. Rep. 485 (1986), followed in In re Marriage of Whiting, 259 M 180, 854 P2d 343, 50 St. Rep. 747 (1993).

Notice to Appoint Counsel — Default Dissolution Set Aside: After the wife's second attorney withdrew, the court set the next hearing date for September 11. Pursuant to this section, the husband's counsel gave notice to her to appoint other counsel or appear in person on August 6, a date of no significance. When the wife did not appear on that date, a default judgment was granted. On appeal, the Supreme Court set aside the default based on the entirety of the circumstances. In part, it stated that the husband's notice to the wife should have stated that the wife would be expected to appear on the September date, with or without counsel. In re Marriage of Neneman, 217 M 155, 703 P2d 164, 42 St. Rep. 1095 (1985).

Required Notice When Counsel Withdraws: An adverse party with notice of the withdrawal of the opposing party's counsel has a duty to take reasonable steps to inform the opposing party of an appointed trial date and that he should either obtain new counsel or proceed to trial without counsel. If the represented party can show he made a good-faith effort to notify the unrepresented party and advise him that he should substitute counsel or appear in person and the notice also sets forth the date of the next hearing or action in the matter pending, then the represented party will have satisfied the notice requirements of this section. McPartlin v. Fransen, 178 M 178, 582 P2d 1255, 35 St. Rep. 1191 (1978), followed in Stanley v. Holms, 281 M 329, 934 P2d 196, 54 St. Rep. 195 (1997), and In re Marriage of Wallace, 284 M 360, 944 P2d 227, 54 St. Rep. 920 (1997).

Withdrawal of Attorney — Notice Between Parties Not Required: Adverse party was not required to advise the opposite party to appoint another lawyer or appear for himself where the opposite party's lawyer, with the consent of that party, withdrew from the case. Sikorski & Sons, Inc. v. Sikorski, 162 M 442, 512 P2d 1147 (1973).

Application for Extension of Filing Time Not Prohibited: There was no merit to an appellant's argument in opposition to a motion to strike a bill of exceptions that because an extension of time could not exceed 90 days without the consent of the adverse party pursuant to section 25-1-301 and because he could not get an extension until a new attorney for the adverse party was appointed pursuant to this section, he was prevented from making a timely filing of his bill. Even though appellee's attorney may have died, this section is not designated to enable a prospective appellant to disregard the time limitation on filing a bill by delaying notice to the adverse party to appoint a new attorney. Berg v. Fraser, 136 M 525, 349 P2d 317 (1960).

Demand for Replacement of Attorney Required: When one attorney dies, appointment of a successor must be demanded. Hand v. Hand, 131 M 571, 312 P2d 990 (1957).

Special Appearance Not Waiver of Failure to Appoint: Where a divorced wife's attorney died and defendant husband did not demand the appointment of a successor, the special appearance by an attorney to quash an order that the wife show cause why the divorce decree should not be modified did not waive the defect that there was no statutory substitution of an attorney. Hand v. Hand, 131 M 571, 312 P2d 990 (1957).

Dismissal of Appeal for Attorney's Death Denied: Where there is a failure to show that the procedure has been followed when an attorney for a party litigant dies, a motion to dismiss the appeal will be denied. In re Estate of Knowles, 130 M 637, 304 P2d 923 (1956).

37-61-406. Penalty for deceit.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

No Evidence to Support Malicious Prosecution or Abuse of Process Claim — District Court Dismissal of Attorney Deceit Claim Improper: In a suit for malicious prosecution, abuse of process, and attorney deceit, the District Court did not err by granting judgment in favor of the defendant on the malicious prosecution claim or by awarding summary judgment to the defendant on the abuse of process claim when the plaintiff failed to prove the elements necessary to establish the claims. The plaintiff failed to prove malicious prosecution when, for purposes of establishing probable cause, all of the parties reasonably believed the facts gave rise to a valid claim. The plaintiff also failed to prove abuse of process despite his allegations that the ulterior purpose of the suit was to coerce him into paying damages. Payment of damages is a legitimate purpose for a civil action, and no facts existed to demonstrate that the defendant acted with an improper ulterior purpose. However, the District Court erred by granting summary judgment to the defendant on the attorney deceit claim when a trier of fact could find that the defendant acted deceitfully with the intent to deceive opposing counsel. Spoja v. White, 2014 MT 9, 373 Mont. 269, 317 P.3d 153, following Plouffe v. Dept. of Public Health and Human Services, 2002 MT 64, 309 Mont. 184, 45 P.3d 10, Hughes v. Lynch, 2007 MT 177, 338 Mont. 214, 164 P.3d 913, and Judd v. Burlington N. & Santa Fe Ry. Co., 2008 MT 181, 343 Mont. 416, 186 P.3d 214.

Failure to Show That but for Negligent Legal Advice, Deportation Could Have Been Successfully Defended — Professional Negligence Claim Properly Dismissed: Fang, a Chinese citizen and lawful permanent United States resident employed by Montana State University-Bozeman, was involved in a domestic dispute with his wife that resulted in charges of assault. Fang consulted Bock, who worked at the university legal services offices, regarding the possibility of deportation. Bock in turn consulted Rice, an attorney who had made a presentation on immigration law at a seminar that Bock had attended, and asked if a misdemeanor domestic abuse charge was grounds for deportation. Rice informed Bock that the federal Immigration and Naturalization Service (INS) would not initiate deportation proceedings until the commission of two misdemeanors. Bock relayed that information to Fang, who relied at least in part on the information and pleaded guilty to family member assault. However, in 1996, Congress enacted a new immigration statute (see 8 U.S.C. 1227(a)(2)(E)(i)) that provides that domestic violence convictions are deportable offenses. Several weeks after pleading guilty, Fang received a notice to appear and face deportation. After hiring new counsel, Fang moved to withdraw the guilty plea. The District Court granted the motion on grounds that the failure of Bock to inform Fang of the possibility of removal to China constituted ineffective assistance of counsel, and the INS agreed to suspend further proceedings until the resolution of charges against Fang. Based on the advice of his new counsel, Fang reached a plea agreement with the Gallatin County Attorney to plead guilty to an amended charge of assault. Following conviction, the INS again moved to deport Fang, and based on the fact that assault also constitutes a crime of violence against a protected person pursuant to federal immigration law, Fang was ordered to be deported. Fang then filed a complaint against Bock, seeking damages for professional negligence and negligent supervision and treble damages under this section. The District Court applied Lorash v. Epstein, 236 M 21, 767 P2d 1335 (1989), and determined that Fang could not satisfy the last element of the test for a prima facie case of professional negligence, which requires a showing that but for such negligence, Fang would have successfully defended against the offense. The court then summarily dismissed the case. Fang appealed, contending that because of Bock's advice, he was exposed to the possibility of removal from this country and had to spend substantial amounts of money to avoid that exposure. Pursuant to Lorash, the Supreme Court had to determine whether Fang would have been exposed to the possibility of removal from this country with or without Bock's advice, in light of the offenses to which Fang pleaded guilty, the statutory basis for deportation, and the immigration judge's explanation for the deportation order. Under either charge, Fang was guilty of an offense of violence against a protected person—his wife. The title of the offense was irrelevant because for purposes of immigration law, misdemeanor assault is considered just as much a crime of violence against a spouse as family member assault. Further, Fang's argument that a different result was compelled by the fact that the assault conviction was subsequently expunged based on a deferred prosecution also failed because under federal case law, no effect is to be given to a state action that purports to remove a guilty plea or conviction by operation of a state rehabilitative statute. Thus, Fang's situation was a result of the conduct that he admitted and was the same following correct legal advice as it was following Bock's incorrect advice. Although Bock misinformed Fang, that advice did not lead to Fang's predicament, nor would the money that he spent to have the first conviction set aside have changed the result. Fang could not prove that but for negligent legal advice he could have avoided deportation, and Bock was entitled to judgment as a matter of law. Fang v. Bock, 2001 MT 116, 305 M 322, 28 P3d 456 (2001).

Statute of Limitations Applicable to Penalty for Deceit: Because this section, which provides a penalty for deceit or collusion by an attorney, is clearly a penalty statute, the 2-year statute of limitations in 27-2-211 applies rather than the 3-year general tort statute of limitations. Barrett v. Holland & Hart, 256 M 101, 845 P2d 714, 49 St. Rep. 1156 (1992), and 50 St. Rep. 63 (1993).

Dual Civil and Criminal Sanctions: This section has a dual purpose. One purpose is to compensate the innocent party who incurred additional time and expense as a result of the deceit of the culpable attorney. The other is to punish by criminal action any attorney who deceives the court or the other party. If criminal penalties are sought under this section, the accused lawyer must be indicted and prosecuted by the state. He is entitled to all of the rights guaranteed under the Constitution of the United States and the Montana Constitution. On the other hand, if only monetary sanctions are sought under this section, the determination can be made in a civil proceeding. LaFountaine v. St. Farm Mut. Auto. Ins. Co., 215 M 402, 698 P2d 410, 42 St. Rep. 496 (1985).

Misrepresentation and Improper Process by Attorney — Sanctions: Since under 33-1-602 (now repealed) defendant, a foreign insurer, could only be served by service upon the Commissioner of Insurance, personal jurisdiction over insurer was not obtained when it was served at its Billings claim office. Thus, when plaintiffs' attorney appealed quashing of the service, the appeal was dismissed. Plaintiffs' attorney represented to the District Court's personnel that he had won the appeal and was entitled to a default judgment, and the personnel entered one against insurer for $150,000 punitive damages and $385 costs. The default judgment was void for want of jurisdiction, and the District Court correctly vacated it. As insurer was not properly served, the District Court properly ruled plaintiffs could not take depositions. The attorney was properly adjudged liable to insurer for $4,031.50 under 37-61-406, stating that an attorney guilty of deceit or collusion with intent to deceive the court or a party forfeits to the party injured by his deceit or collusion treble damages. LaFountaine v. St. Farm Mut. Auto. Ins. Co., 215 M 402, 698 P2d 410, 42 St. Rep. 496 (1985).

Fraud by Party's Own Attorney — Not Within Section: Plaintiff alleged that his attorney had committed fraud in splitting a settlement and asked for treble damages. Defendant contended that treble damages did not apply to the facts. The court held that this section applies to deceit practiced upon the court or the adverse party during the litigation process. The act of deceit relating to this case constituted the incident upon which the cause of action was filed. For this reason, this section was not statutory grounds for assessing treble damages. Eaton v. Morse, 212 M 233, 687 P2d 1004, 41 St. Rep. 1708 (1984).

Abuse of Deposition Process — Basis for Tort of Abuse of Process: The plaintiff and his wife were divorced in 1976. The plaintiff sought to have the property agreement set aside as unconscionable and failed. In 1979, he filed a fraud action against his ex-wife and her attorney in conjunction with the dissolution. The ex-wife petitioned the court to hold plaintiff in contempt for failure to comply with the dissolution decree. Plaintiff, residing in Idaho, was served, failed to appear, and was held in contempt. The judge issued a bench warrant for his arrest. Defendants, counsel for the ex-wife in the fraud case, set a time to take plaintiff's deposition in Bozeman. Subsequent to noticing the deposition, defendants notified the District Court Judge that plaintiff would be in Bozeman that day. After taking plaintiff's deposition, defendants notified the judge, who had plaintiff arrested. Plaintiff filed suit against defendants for the tort of malicious abuse of process, and defendants moved for summary judgment. The federal court held that abuse of the power granted under former Rule 30, M.R.Civ.P. (now superseded), relating to depositions can serve as the basis for the tort of abuse of process. Factual issues existed, so that the summary judgment motion was denied. Hopper v. Drysdale, 524 F. Supp. 1039, 38 St. Rep. 1970 (D.C. Mont. 1981).

37-61-407. Penalty for delay.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Actual Damages: Under this section, only actual damages may be trebled, not the statutory interest due. Daniels v. Paddock, 145 M 207, 399 P2d 740 (1965).

Breach of Fiduciary Duty: Where attorney paid off client's mortgage with stipulation to receive client's inheritance when it came due, failure to give money to client under transaction, which was a breach of attorney's fiduciary duty, subjected attorney to treble damages. Daniels v. Paddock, 145 M 207, 399 P2d 740 (1965).

37-61-408. Attorney prohibited from buying claim or demand for purpose of bringing action.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Trustee Law Firm as Proper Party to Suit: Plaintiff law firm, acting as trustee for medical providers, sought to recover payment for medical care provided to the Harrisons' children. Following a 1-day nonjury trial, the District Court ordered the Harrisons to pay the medical bills and the costs of the action. On appeal, the Harrisons contended that the law firm was not a proper party because it had acquired an interest in claims for the purpose of bringing suit under certain contingencies, in violation of this section. The Supreme Court found that the law firm was a proper party and held that the Harrisons' contention was without merit. There was no violation of the trust agreement alleged, nor were the Harrisons' substantive rights prejudiced. Further, the trust agreement removed much of the risk of conflict of interest because it required the trust beneficiaries' consent to suit or compromise of claims, in conformity with State Bar Ethics Opinion 910529. Balyeat Law, P.C. v. Harrison, 1999 MT 144, 295 M 13, 983 P2d 902, 56 St. Rep. 566 (1999).

Attorney's Purchase of Interest in Client's Land With No Intent to Bring Action Not Champerty: Attorney Stone purchased an interest in land owned by his client, Green, knowing that Green and a cotenant, Gremaux, had been unable to agree to terms for the sale or lease of Green's interest. Gremaux contended that Stone's action constituted champerty. Distinguishing Lussy v. Bennett, 214 M 301, 692 P2d 1232 (1984), the Supreme Court held that Stone's action did not involve champerty because Stone purchased the interest without any intent of bringing an action against Gremaux for Stone's personal economic benefit. In re Green v. Gremaux, 285 M 31, 945 P2d 903, 54 St. Rep. 1029 (1997).

Party Proceeding Pro Se — Frivolous and Champertous Claim: By his own statement, Lussy acquired title to one of two parcels in order to bring an action to remove a "trespassing house" and intended to divide the proceeds among the remaining members of his family. Under 37-61-408, an attorney is prohibited from acquiring a claim or demand for purpose of bringing action. Under 37-61-411, the same rule applies when a party prosecutes in person instead of acting through an attorney. Lussy's complaints smack of champerty, and public policy requires dismissal of his action. Lussy v. Bennett, 214 M 301, 692 P2d 1232, 41 St. Rep. 2487 (1984).

Public Policy: This section and section 93-2801, R.C.M. 1947 (since repealed), providing that every action must be prosecuted in the name of the real party in interest, by clear implication intend to discourage litigation and keep it within certain bounds in the interest of a sound public policy. Streetbeck v. Benson, 107 M 110, 80 P2d 861 (1938), explained in N. Mont. Ass'n of Credit Men v. Hauge, 111 M 56, 105 P2d 1102 (1940), and Rae v. Cameron, 112 M 159, 114 P2d (1941).

Denial for Recovery on Debt: Under this section an attorney is prohibited from buying any note, debt, or other thing in action for the purpose of bringing suit thereon, and where his intent is established, he cannot recover. Strever v. Sinclier, 66 M 258, 213 P 253 (1923).

Corporate Stock: This section does not include the shares of the capital stock of a corporation. Forrester v. Boston & Mont. Consol. Copper & Silver Min. Co., 21 M 544, 55 P 229 (1898).

37-61-411. Same rule when party prosecutes in person.

Case Notes

Party Proceeding Pro Se — Frivolous and Champertous Claim: By his own statement, Lussy acquired title to one of two parcels in order to bring an action to remove a "trespassing house" and intended to divide the proceeds among the remaining members of his family. Under 37-61-408, an attorney is prohibited from acquiring a claim or demand for purpose of bringing action. Under 37-61-411, the same rule applies when a party prosecutes in person instead of acting through an attorney. Lussy's complaints smack of champerty, and public policy requires dismissal of his action. Lussy v. Bennett, 214 M 301, 692 P2d 1232, 41 St. Rep. 2487 (1984).

37-61-412. Partner of public prosecutor not to defend.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-61-413. Former public prosecutors not to defend.

Case Notes

No Showing That Representation by Former Deputy County Attorney Influenced by Actual Conflict of Interest: In postconviction relief proceedings, Thurston claimed that he received ineffective assistance of counsel when he was represented at trial by a former Deputy County Attorney who had allegedly exchanged information about the investigation of Thurston's case while employed by the County Attorney's office. Thurston's claim was denied, and on appeal, the Supreme Court affirmed. Under St. v. Deschon, 2002 MT 16, 308 M 175, 40 P3d 391 (2002), a defendant claiming ineffective assistance of counsel because of a conflict of interest must show that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected counsel's performance. Although bar association standards and this section supported an argument that counsel should not have represented Thurston after supposedly gaining knowledge of the case while employed by the County Attorney's office, it was not a basis for reversal unless Thurston could establish that an actual conflict existed. Even though the conflict of interest was disclosed to Thurston, he did not request other counsel, nor did Thurston demonstrate how the conflict might have affected counsel's performance or resulted in prejudice. Therefore, the postconviction claim was properly denied. Thurston v. St., 2004 MT 142, 321 M 411, 91 P3d 1259 (2004).

No Violation When Separate Charges Involved: Appointment as defense counsel of attorney who had successfully prosecuted defendant on another charge over 7 years earlier was not a violation of defendant's constitutional rights; prosecution of an individual by a former County Attorney did not forever prohibit that attorney from defending that individual on a separate and distinct criminal charge. Petition of Pepperling, 162 M 524, 508 P2d 569 (1973), followed in St. v. Martz, 233 M 136, 760 P2d 65, 45 St. Rep. 1370 (1988).

Waiver: Defendant who had choice of defense counsel and chose attorney who had prosecuted him in earlier case waived any right to demand new trial based on such representation. St. v. Gallagher, 162 M 155, 509 P2d 852 (1973).

Previous Prosecution by Attorney — New Trial Refused: Under a repealed section prohibiting attorneys from defending prosecutions carried on formerly by themselves, convicted petitioner was not entitled to new trial merely on ground his voluntarily hired counsel had prosecuted him 4 years before, where petitioner at all times knew that his counsel was such former prosecutor and where the trial at hand had no relation to any official duty performed by his counsel as prosecutor. In re Petition of Allen, 161 M 547, 507 P2d 1049 (1973).

By Writ of Error Coram Nobis: Where prisoner was represented in a second case by court-appointed counsel who had formerly prosecuted him while serving as County Attorney in a case resulting in the prior conviction with which he was charged in the second case, the error, if any, should have been raised in the District Court by a Writ of Error Coram Nobis and not by habeas corpus proceeding in the Supreme Court. Butler v. St., 139 M 437, 365 P2d 822 (1961).

37-61-414. Partners not to appear on opposite sides.

Case Notes

Disqualification of Attorney's Firm Upon Disqualification of Attorney: Once an attorney is found to be disqualified, such as for previous representation of an adverse party, the attorney's firm is also disqualified. In re Guardianship of Mowrer, 1999 MT 73, 294 M 35, 979 P2d 156, 56 St. Rep. 300 (1999), following Trone v. Smith, 621 F2d 994 (9th Cir. 1980).

37-61-416. Party may appear in person or by attorney.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

No Right to Representation by Nonlawyer: A defendant has an inalienable right to represent himself, but has no right to demand representation by a nonlawyer. A District Court lacks authority to allow representation of a defendant by a nonlawyer. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

Election Not to Be Represented by Counsel: Owner of a motor vehicle wrecking facility who had previously been fined by the court for failure to license and shield his facility knowingly waived his right to counsel at a later proceeding and was competent to represent himself. The later penalty would not be set aside because he was not represented by counsel at the show cause hearing. St. v. Bernhard, 220 M 275, 714 P2d 558, 43 St. Rep. 357 (1986), followed in In re Marriage of Vakoff, 252 M 56, 826 P2d 552, 49 St. Rep. 144 (1992).

Divorce Action — Appeal: In an appeal brought pro se, appellant failed to demonstrate error in the District Court's proceedings and judgment regarding a divorce action. Jerome v. Jerome, 175 M 429, 574 P2d 997 (1978).

Right to Manage Litigation and Employ Counsel: It is not a mere technicality to insist that a person's rights may not be litigated without his authority, for that is an inherent right guaranteed by the Due Process Clauses of both the federal Constitution (5th amendment; 14th amendment) and state Constitution (Art. III, sec. 27, 1889 Mont. Const., now Art. II, sec. 17, Mont. Const.) and by this section, applying to the right of a person sui juris (in the instant case the ward on attaining majority) to manage his own affairs, including the right to control his own litigation and select his own attorney. Mitchell v. McDonald, 114 M 292, 136 P2d 536 (1943).

37-61-417. Attorney may defend in person.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-61-418. Attorney may see prisoner.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Application to State Prison: This section is sufficiently broad to include the Warden of the state prison and inmates thereof. State ex rel. Middleton v. District Court, 85 M 215, 278 P 122 (1929).

Nature of Attorney's Business Determinative: The right granted by this section to an attorney to consult with a prisoner depends upon legitimate business to be transacted, not upon a mere desire to visit the prisoner, and the reasonableness of the arrangement made for the interview in each case depends largely upon the nature and extent of the business to be transacted. State ex rel. Middleton v. District Court, 85 M 215, 278 P 122 (1929).

Particular Arrangements for Privacy Held Sufficient: Pursuant to the provisions of this section, the District Court in a proceeding in mandamus ordered the Warden of the state prison to permit an attorney to consult with a prisoner in absolute privacy. The Warden ordered that consultation be permitted through a small window fitted in the wall with a 1/2-inch wire mesh on each side of the wall, no one being within earshot but a guard standing outside a glass door where he could see the attorney but could not hear what was being said. The arrangement made by the Warden under the circumstances of the case sufficiently complied with the order of the court, and a judgment of contempt was not supported by the evidence. State ex rel. Middleton v. District Court, 85 M 215, 278 P 122 (1929).

Writ of Mandate Appropriate to Secure Right of Lawyer: An attorney for a prisoner confined in the state penitentiary against whom an untried criminal charge was pending in the District Court had the right under this section to a Writ of Mandate for a reasonable opportunity to consult with his client in absolute privacy, and the contention that an action of debt to recover the penalty of $100 from an officer violating the provision of the section affords the exclusive remedy open to the prisoner has no merit. State ex rel. Casleton v. Bd. of Prison Comm'rs, 84 M 14, 273 P 1044 (1929).

Attorney General's Opinions

Convict's Right to Contact Attorney: A convict has the right to contact any attorney of his choice or a bona fide corporation or association organized for the purpose of providing legal counsel for impecunious individuals. 29 A.G. Op. 25 (1961).

37-61-419. Attorney not to become surety on bond.

Compiler's Comments

1981 Amendment: Deleted "or in any bond or recognizance for the appearance of any person or persons charged with any public offense" after "coroner" in (1); rearranged phraseology; added (2) prohibiting attorney from acting as surety for bail or furnishing bail.

37-61-420. Judgment lien for compensation.

Compiler's Comments

2021 Amendment: Chapter 270 deleted former (2) (see 2021 Session Law for former text); inserted (2) concerning the scope of an attorney lien after the attorney is engaged by a client; inserted (3) concerning the scope of a lien held by an attorney who performs services in a transactional matter; inserted (4) concerning asserting a lien without breaching attorney-client privilege; inserted (5) concerning the requirement of written consent by client for an attorney to place a lien on property not involved in the legal matter for which the attorney rendered services; inserted (6) concerning requirements for a lien to attach to real property; inserted (7) concerning the requirement to state to a client in an engagement agreement that if fees are unpaid an attorney lien may be asserted or to communicate the assertion of a lien to the client at the client's last known address or e-mail address at the time of asserting the lien, the effect of failure to communicate the lien to the client, and the effect of the client's consent in writing to the assertion of a lien on any property that is the subject of the client's legal matter; inserted (8) stating that foreclosure of the lien provided for in this section is governed by 27-2-202(1); and inserted (9) defining the term "client" to include a former client pursuant to the Montana Rules of Professional Conduct. Amendment effective October 1, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Attorney Fees and Liens — Generally 1213
Priority of Liens 1217
Extent of Lien 1218
Foreclosure of Lien 1218
Notice of Lien 1219

ATTORNEY FEES AND LIENS — GENERALLY

Property Description Not Required for Valid Attorney Lien: The respondent, a law firm, had entered into a fee agreement with a client for the respondent to represent the client in a bankruptcy proceeding. The respondent later filed an attorney lien against five of the client's properties. Two of the pieces of property, however, had been purchased by the petitioner, and the petitioner filed an action asking the District Court to declare the attorney liens invalid because they did not sufficiently describe the subject property. After the District Court declared the liens invalid, the respondent appealed. The Supreme Court reversed and remanded, holding that the statute governing attorney liens does not require a property description. Mulroy v. Pierce, 2017 MT 3, 386 Mont. 190, 387 P.3d 199.

Summary Judgment for Bank That Disbursed Funds to Constituencies Absent Showing of Conversion, Despite Presence of Attorney's Lien on Funds: Plaintiff law firm represented a woman in divorce proceedings and filed a lien against the woman for attorney fees that she allegedly owed the firm. A divorce decree was issued that awarded the woman $400,000 from a bank trust account, but no fees were awarded to the firm, which subsequently filed a collection action against the woman, the account trustees, and the bank, asserting a breach of duty, conversion, malice, and actual fraud and seeking punitive damages. However, at no time did the firm obtain a judgment on the lien or a prejudgment attachment of the trust account. The District Court granted summary judgment for the account trustees and the bank, and the firm appealed regarding the conversion claim. The Supreme Court affirmed because the firm failed to establish conversion of its lien. Without a judgment fixing the debt or a writ executing a judgment upon the trust fund account, the firm could not establish its ownership of the funds or a right to possession of them, and the mere assertion of a lien did not suffice to defeat the bank's or the trustee's fiduciary duties, so summary judgment was proper. St. Peter & Warren, P.C. v. Purdom, 2006 MT 172, 333 M 9, 140 P3d 478 (2006), following King v. Zimmerman, 266 M 54, 878 P2d 895 (1994).

Common Fund Not Created by Stavenjord I — No Recovery of Attorney Fees From Nonparticipating Claimants: On remand to the Workers' Compensation Court of Stavenjord v. Mont. St. Fund, 2003 MT 67, 314 M 466, 67 P3d 229 (2003) (Stavenjord I), the State Fund paid Stavenjord's additional benefits, and Stavenjord then sought recovery of common fund attorney fees for Stavenjord-type benefits secured by nonparticipating claimants. The Workers' Compensation Court concluded that Stavenjord I created a common fund and that Stavenjord's counsel was entitled to collect common fund fees from nonparticipating claimants who benefited from Stavenjord I. On appeal, the Supreme Court disagreed. Applying the elements of a common fund set out in Mtn. W. Farm Bureau Mut. Ins. Co. v. Hall, 2001 MT 314, 308 M 29, 38 P3d 825 (2001), the court determined that Stavenjord I did not create an identifiable monetary fund or benefit, so the first element in creation of a common fund was not satisfied and Stavenjord's counsel was not entitled to collect common fund fees from nonparticipating claimants. The case was remanded to the Workers' Compensation Court for a determination of an appropriate procedure by which potential Stavenjord beneficiaries would be identified and notified of their interests related to increased Stavenjord-type benefits. Stavenjord v. Mont. St. Fund, 2006 MT 257, 334 M 117, 146 P3d 724 (2006).

Method for Resolving Fee Disputes in Contingency Fee Cases When Attorney Dissociates From Firm and Continues to Represent Clients: Attorney Halverson worked on plaintiff's case for 6 months before resigning from the firm. Plaintiff decided to remain with Halverson and discharged the firm. Halverson accepted the representation and reimbursed the firm upon transfer of the case. The firm then filed a lien on any potential attorney fees recovered in plaintiff's case. Plaintiff was ultimately awarded nearly $4 million in damages and moved to determine the amount that the firm was entitled to pursuant to the lien. Based on Halverson's affidavit of hours spent on the case while Halverson was at the firm, the District Court calculated quantum meruit by multiplying the number of hours Halverson worked on the case while at the firm by Halverson's proposed hourly rate and awarded the firm $3,750. The firm appealed on grounds that quantum meruit was an inequitable way to apportion fees under these circumstances. The Supreme Court adopted the methodology in Phil Watson, P.C. v. Peterson, 650 NW 2d 562 (Iowa 2002), to resolve fee disputes in contingency fee cases when an attorney dissociates from a firm and continues to represent clients originally represented by the firm. The court agreed that quantum meruit provided the proper measure of fees to the firm awarded after Halverson left the firm and represented the original firm's entitlement. A court shall award to the original firm a fee based on a percentage of total time that the firm spent on the case while the departing attorney worked at the firm compared to the time that the departing attorney worked on the case after leaving the firm. However, the court disagreed on the method of calculation based only on Halverson's affidavit. The court remanded for an evidentiary hearing to allow Halverson and the firm to present evidence regarding the amount of time that Halverson spent on the case while employed by the firm compared to the amount of time spent on the case after Halverson left the firm and directed the District Court to then recalculate the firm's award based on that percentage. Pumphrey v. Empire Lath & Plaster, 2006 MT 255, 334 M 102, 144 P3d 813 (2006).

Common Fund Doctrine Equitable Exception to American Rule Regarding Award of Attorney Fees Applicable to Medical Services Lien — Elements of Doctrine: Kilmer suffered severe injuries as a passenger in a vehicle driven by Hall. Kilmer received medical attention from a North Dakota hospital, which subsequently perfected a lien for the value of its services in the amount of $309,000. Hall had no insurance, but the co-owner of the vehicle had a $500,000 policy with Mountain West Farm Bureau (Mountain West). The policy had a step-down provision limiting Mountain West's liability to $25,000 for passengers other than the insured or a relative of the insured, so Mountain West initially found that Kilmer was entitled to only $25,000. However, after negotiating with Kilmer's attorney, Mountain West agreed to proffer the policy limit of $500,000, plus $30,000 in no-fault coverage. Mountain West then filed a complaint for interpleader, the hospital cross-claimed against Kilmer for satisfaction of its lien, and Kilmer cross-claimed against the hospital for a reduction in the hospital's recovery for a pro rata portion of Kilmer's attorney fees incurred in negotiating the settlement with Mountain West. The District Court applied Sisters of Charity of Providence of Mont. v. Nichols, 157 M 106, 483 P2d 279 (1971), and held that the hospital was not liable for a pro rata portion of Kilmer's attorney fees. Kilmer appealed, and the Supreme Court reversed. Under the 1999 version of 71-3-1114 applicable to this case, the hospital had a valid lien for its medical services; however, the statute was silent on the issue of attorney fee apportionment (see, however, 2001 amendments addressing a hospital's pro rata liability for an injured person's attorney fees). Generally, Montana follows the American rule that a party in a civil action is not entitled to attorney fees absent a specific contractual or statutory grant of those fees. There are exceptions to the American rule, one of which is the common fund doctrine authorizing the spread of fees among the individuals who benefit from the litigation that created the common fund. The three elements necessary to establish a common fund, as set out in Means v. Mont. Power Co., 191 M 395, 625 P2d 32 (1981), and Murer v. St. Comp. Mut. Ins. Fund, 283 M 210, 942 P2d 69 (1997), are: (1) one party, known as the active beneficiary, must create, reserve, or increase a common fund; (2) the active beneficiary must incur legal fees in establishing the common fund; and (3) the common fund must benefit ascertainable, nonparticipating beneficiaries. To the extent that there are inequities in the contributions of participating counsel, the court may then intervene to allocate fees accordingly. Because the common fund doctrine was not raised in Sisters of Charity of Providence of Mont. v. Nichols, the Supreme Court held that that case did not preclude application of the doctrine in the present case. Thus, the District Court erred as a matter of law in relying on Sisters of Charity of Providence of Mont. v. Nichols to grant the hospital's partial summary judgment. Although the Supreme Court declined to rule on the applicability of the common fund doctrine here because the parties did not present arguments in District Court as to whether Kilmer could satisfy the elements of the doctrine, the case was remanded to allow Kilmer to present arguments on the applicability of the common fund doctrine. Mtn. W. Farm Bureau Mut. Ins. Co. v. Hall, 2001 MT 314, 308 M 29, 38 P3d 825 (2001).

Payment for Attorney Who Voluntarily Withdraws From Contingent Fee Case Before Occurrence of Contingency Based on Good Cause for Withdrawal — Modern Majority Rule: Sullivan retained plaintiff Bell & Marra, pllc, to represent him in an employment termination case, entering a contingent fee agreement for payment. Plaintiff represented Sullivan through two trials and settlement negotiations, after which it sent Sullivan a letter stating that it could not continue under the written 40% contingent arrangement and demanding that, in order to continue representation, Sullivan deposit $2,000 to cover costs of appeal transcripts and agree to pay plaintiff a percentage of all settlement proceeds, judgment damages, and other consideration recovered from the employer in the amount of 50% for appeal and subsequent trial for discrimination or wrongful discharge and an additional 5% for each appeal thereafter. Sullivan declined the ultimatum and hired new counsel. Upon settlement of Sullivan's employment claim, plaintiff filed: (1) a lien foreclosure action for payment of fees involving the employment claim, including advanced costs plus 40% of the recovery or the quantum meruit value of the legal services performed computed on an hourly basis; (2) a contract action related to fees incurred during representation of Sullivan's dissolution proceedings; and (3) a claim against Sullivan's employer requesting that settlement proceeds be held or paid to plaintiff according to the lien against Sullivan. Sullivan asserted affirmative defenses, including fraud, unavailability of quantum meruit damages because of plaintiff's repudiation of the fee agreement, and breach of fiduciary duty, as well as counterclaims for breach of contract, conversion, breach of the implied covenant of good faith and fair dealing, and breach of fiduciary duty. The District Court concluded that whether plaintiff withdrew or was fired was irrelevant and that the parties simply terminated the attorney-client relationship. The court then denied Sullivan's motions and counterclaims and granted summary judgment to plaintiff on all issues, awarding plaintiff attorney fees for the employment-related litigation at the contract rate of 40% minus the amount in the fee arrangement with Sullivan's subsequent attorney; fees and costs incurred during Sullivan's dissolution action; outstanding costs for the employment litigation; prejudgment interest on the damage awards; and plaintiff's attorney fees and costs incurred in pursuing the foreclosure action. Sullivan appealed the summary judgment. In a case of first impression, the Supreme Court adopted the modern majority rule, which holds that an attorney who voluntarily withdraws from a contingency fee case without good cause forfeits recovery of compensation for services performed, but if withdrawal was for good cause or was justified, the attorney may recover based on quantum meruit. Whether good cause exists depends on the facts and circumstances of each case. Good cause exists when a client has engaged in culpable conduct, when continued representation would violate an attorney's ethical obligations, or when an attorney lacks the resources to pursue litigation. However, a client's refusal to accept a settlement offer does not constitute good cause, nor is it justifiable for an attorney to withdraw if the attorney does not believe that the negotiated contract is sufficiently compensatory. In the present case, plaintiff withdrew because continued representation had become a financial burden, which is a good cause for withdrawal under the Montana Rules of Professional Conduct, but not necessarily one entitling an attorney to compensation. Faced with being forced to enter into a new and unacceptable fee agreement when the time for pursuing an appeal was running, Sullivan's decision to reject plaintiff's ultimatum resulted in plaintiff's voluntary withdrawal. In light of the modern majority rule, plaintiff did not have good cause to withdraw that would justify compensation, so the District Court's summary judgment was reversed. Bell & Marra, pllc v. Sullivan, 2000 MT 206, 300 M 530, 6 P3d 965, 57 St. Rep. 810 (2000), following Ausler v. Ramsey, 868 P2d 877 (Wash. Ct. App. 1994). See also Augustson v. Linea Aerea Nacional-Chile S.A., 76 F3d 658 (5th Cir. 1996).

Attorney Fee Lien Applicable to Medical Benefits Received in Workers' Compensation Settlement: Lockhart moved for an order directing the insurer to pay attorney fees out of the medical benefits owing to Lockhart under his successful workers' compensation claim. The Workers' Compensation Court denied the attorney fees on grounds that medical benefits are not benefits, but rather an imposition of liability imposed on the insurer, and that because an award of medical benefits does not entitle a claimant to receipt of money, there is no property against which an attorney fee lien can attach. The court held that when a claim has been denied and later found compensable by the court without a separate award of attorney fees, a contingent attorney fee may be computed based on medical benefits, but the amount may not be deducted from the compensation payable to the medical providers. The Supreme Court disagreed. Medical benefits are not the property of the medical providers simply because the medical providers are the actual recipients of the money, nor are medical benefits simply an obligation of the insurer. Instead, medical benefits are the property of the individual claimant, and, as such, the claimant should be allowed to pay attorney fees out of medical benefits. In the context of workers' compensation cases, attorney fee liens attach as a matter of law to all compensation, including medical benefits, upon the filing of an attorney retainer agreement with the Department of Labor and Industry. To require a claimant to pay a disproportionate amount of attorney fees from the claimant's personal resources would be unfair and contrary to the fundamental purpose of workers' compensation laws. Lockhart v. N.H. Ins. Co., 1999 MT 205, 295 M 467, 984 P2d 744, 56 St. Rep. 800 (1999), following Carlson v. Cain, 216 M 129, 700 P2d 607, 42 St. Rep. 695 (1985), and followed in Dildine v. Liberty NW. Ins. Corp., 2009 MT 87, 350 M 1, 204 P3d 729 (2009).

Notice and Hearing Required: Plaintiff changed attorneys during a proceeding. The order substituting counsel provided for attorney fees to the original counsel. It was error for the District Court to award fees without notice to the plaintiff and without providing an opportunity for a hearing. Bink v. First Bank West, Great Falls, Inc., 246 M 414, 804 P2d 384, 48 St. Rep. 17 (1991).

No Verdict or Judgment in Favor of Client: District Court did not err in denying attorney's claimed lien against his client's cattle that District Court allowed to be sold at Sheriff's sale to satisfy judgment in favor of the other party. When there was no verdict or judgment in favor of the attorney's client, the claimed lien was properly denied. Hill v. Turley, 218 M 511, 710 P2d 50, 42 St. Rep. 1783 (1985).

Lien Protection Extended to Workers' Compensation Attorneys Who File Retainer Agreements: This section provides that an attorney's lien attaches to a client's cause of action or counterclaim from "commencement of an action or the service of an answer". Applying this statutory scheme to the present case, a judgment lien would not attach against the claimant's workers' compensation award because the claimant's attorney negotiated a settlement with the fund prior to the commencement of an action. However, the Supreme Court, "by judicial fiat", extends this same protection by providing that an attorney who has filed his retainer agreement with the Workers' Compensation Division has a lien upon the award. The lien attaches upon filing of the contingency fee agreement with the Division. The issue of whether the attorney's name shall be listed as a payee on the state warrant is an administrative detail to be determined by the Workers' Compensation Division. Kelleher Law Office v. St. Comp. Ins. Fund, 213 M 412, 691 P2d 823, 41 St. Rep. 2203 (1984), followed in Lockhart v. N.H. Ins. Co., 1999 MT 205, 295 M 467, 984 P2d 744, 56 St. Rep. 800 (1999), holding that workers' compensation benefits may be subject to a lien for payment of attorney fees.

Incidental Benefit to Third Parties: Fact that settlement of personal injury claim by attorneys for their client incidentally benefited hospital by creating fund from which its bill for treatment of client could be paid did not create an implied contract by hospital to pay attorneys for their services. Neither was hospital obligated to share settlement proceeds on a subrogation theory. Sisters of Charity of Providence of Mont. v. Nichols, 157 M 106, 483 P2d 279 (1971).

Waiver of Lien: Failure of attorney to deduct expenses incurred in obtaining award in case and his expressed intention that he would collect expenses from future settlements constituted waiver of his lien for expenses. Gross v. Holzworth, 151 M 179, 440 P2d 765 (1968).

No Implied Amendment by Workmen's Compensation Laws: The fact that section 92-204, R.C.M. 1947 (since repealed), provides that where an injured employee prosecutes an action against a tortfeasor through whose action he was injured he shall bear all expense incident thereto does not mean that the Legislature thereby intended to or did modify or amend this section, giving attorneys a first lien on the proceeds of a settlement of a cause of action in the hands of whomsoever such proceeds may come, which lien cannot be affected by any settlement between the parties before or after judgment. Hardware Mut. Cas. Co. v. Butler, 116 M 73, 148 P2d 563 (1944).

Eminent Domain Proceedings — Withdrawal of Attorney Before Judgment: This statute is broad enough to include all civil actions, and an attorney's charging lien may be enforced upon application to court in the suit in which the services were rendered. Where counsel withdrew from condemnation suit by the United States at landowner's request, after rendering considerable services, under agreement to be paid specified fee out of proceeds of settlement, they were entitled to lien on the proceeds for such fee on ground that they contributed to the judgment or settlement made, since the lien may arise for services in procuring a judgment or award. U.S. v. Hudson, 39 F. Supp. 797 (D.C. Mont. 1941).

Attorney Not Party to Action: The assertion by counsel for plaintiff of a lien upon the cause of action, under this section, does not make the attorney a real party in interest so that defendant could demand that the complaint be amended by adding the attorney as a party plaintiff. Phelps v. Union Cent. Life Ins. Co., 108 M 78, 88 P2d 58 (1939).

Execution Against Cause of Action — Restraint of Execution Sale: After reversal of Phelps' judgment against it with remand of the cause for a new trial, the railroad company obtained judgment for its costs on appeal and caused execution to be issued and levied upon Phelps' cause of action. Plaintiff, Phelps' attorney, claiming a lien on such cause of action for services rendered, brought suit to enjoin execution sale thereof. District Court did not abuse its discretion in restraining sale and maintaining the status quo pending retrial. Baker v. Tullock, 106 M 375, 77 P2d 1035 (1938).

Remedial Statute — Purpose: This section is a remedial statute that should be construed in advancement of the remedy and so as to secure and protect, and not to defeat, the rights and objects intended by its enactment. Baker v. Tullock, 106 M 375, 77 P2d 1035 (1938).

Doctrine of Champerty and Maintenance Abolished: The effect of this section and of 25-10-301 is to abolish the common-law doctrine of champerty and maintenance in this state, except insofar as it is retained in modified form in 37-61-408 and 37-61-409, and neither of those sections mentions a contract contingent upon the success of the litigant. In re Maury, 97 M 316, 34 P2d 380 (1934); Haley v. Hollenback, 53 M 494, 165 P 459 (1917).

Probate Proceedings — Fee Dependent Upon Existence of Contract: Generally speaking, the right of an attorney to collect payment for his services depends upon the fact of his employment. Where there was no contract of employment of an attorney in behalf of an estate, who on the contrary was employed by one of several devisees to defend a contest of the will under which he claimed, the devisee, and not the estate, was liable for the attorney's fee. In re Baxter's Estate, 94 M 257, 22 P2d 182 (1933), explained in In re Mickich's Estate, 114 M 258, 136 P2d 223 (1943).

Promissory Note Exclusive of Attorney's Fees — No Discharge: While the client controls the course of litigation, including compromises and settlements, if a settlement is made by the client, it is subject to the attorney's claim for fees, and the parties making the settlement are bound to take notice of such claim. While the obligation to pay attorney's fees in case enforced collection of a promissory note becomes necessary is imposed upon the maker in favor of the holder of the note and not in favor of the attorney, payment of the principal sum exclusive of the attorney's fee during the pendency of an action to enforce payment does not discharge the note in full. Nat'l Park Bank of New York v. Am. Brewing Co., 79 M 542, 257 P 436 (1927).

Contract to Retain Attorney — Allegations in Complaint: Under this section and 25-10-301, an attorney may contract with his client freely as to his compensation before the fiduciary relation commences; but with respect to such a contract made after the relation began, he has the burden of showing that the contract was fair and reasonable and entered into freely by the client and that the latter fully knew and understood its provisions. In the absence of such allegations the complaint is insufficient. Coleman v. Sisson, 71 M 435, 230 P 582 (1924).

Contingent Fee Agreement Not Prohibited: In this state attorneys are free, except insofar as they are prohibited by statute, to enter into such contracts with their clients for compensation as they choose. A contract for a contingent compensation is not prohibited and is valid, though such a contract may require the services of the attorney in finding the necessary witnesses. Haley v. Hollenback, 53 M 494, 165 P 459 (1917).

Assertion of Lien Prior to Judgment: An attorney may, independently of his client, assert his lien prior to judgment or settlement, since the statute declares that the lien attaches in favor of counsel for plaintiff from the commencement of the action. Walsh v. Hoskins, 53 M 198, 162 P 960 (1917), followed in Bekkedahl v. McKittrick, 2002 MT 250, 312 M 156, 58 P3d 175 (2002).

Intention of Client Immaterial: Since an attorney's lien cannot be affected by any settlement between the parties before or after judgment, a finding in an action by an attorney on such a lien, that defendants had no intention to defeat the lien by making final payment under a contract of sale in a bank other than the one fixed therein, was immaterial, as was also an allegation in the complaint that the defendants had such intention. Walsh v. Hoskins, 53 M 198, 162 P 960 (1917).

Amount of Fee — Method of Determination: It is not essential to the existence of the lien that the amount of the attorney fee should be definitely fixed. In an action brought for the enforcement of the lien, the amount due must be alleged in the complaint, either by stating a fixed sum or by averring the reasonable value of the services rendered. Coombe v. Knox, 28 M 202, 72 P 641 (1903).

Security in Client's Possession Subject to Lien: The lien granted by this section operates as an equitable assignment of so much of the judgment as will satisfy the lien and, for the purpose of securing payment, subrogates the attorney to the right of his client to that extent. Any security, therefore, which the client has for the payment of his judgment may be availed of for the benefit of the attorney. Coombe v. Knox, 28 M 202, 72 P 641 (1903).

PRIORITY OF LIENS

Attorney Lien Priority Over Chiropractor Lien: Under 71-3-113, other things being equal, different liens on the same property have priority according to the time of their creation. Relying on 71-3-113, the District Court concluded that, having been filed first, a chiropractor's lien had priority over an attorney's lien. However, 71-3-1114 specifically provides that an attorney's lien has priority over a chiropractor's lien, regardless of the time of the liens' creation, so the District

Court's declaration of lien priority was reversible error. Wyant v. Kenda, 2004 MT 348, 324 M 342, 102 P3d 1260 (2004).

Attorneys' Fees Payable — Remainder of Proceeds Subject to Subordinate Lien: Where settlement in personal injury case was paid in three drafts, lien of attorneys representing injured party attached to all three drafts. Since amount of drafts was sufficient to satisfy attorneys' fees in full, previously subordinate hospital lien became the senior outstanding lien against the balance of the settlement proceeds, notwithstanding that attorneys did not actually collect their fees. Attorneys and injured party could not require payment of a pro rata share of attorneys' fees from that portion of settlement proceeds otherwise payable to hospital under its lien rights. Sisters of Charity of Providence of Mont. v. Nichols, 157 M 106, 483 P2d 279 (1971).

Unemployment Compensation Cases: This section being in conflict with 39-51-3104 (now repealed) and 39-51-3105, relating to unemployment compensation claims, the latter sections, being more specific, should control over this section, which is more general, especially where, in light of the services rendered, the attorney's fees could be considered "necessaries" under 39-51-3105. McAlear v. Unemployment Comp. Comm'n, 145 M 458, 405 P2d 219 (1965), followed, with regard to attorney services provided to a wife to obtain orders of protection from an abusive spouse defined as a necessary article, thereby obligating the spouse to pay attorney fees so incurred, in Missoula YWCA v. Bard, 1999 MT 177, 295 M 260, 983 P2d 933, 56 St. Rep. 692 (1999).

Attorney's Fees Subordinate to Costs: An attorney's lien for unpaid compensation is not superior to the adverse party's claim for costs accruing as a part of the litigation on the cause of action. Galbreath v. Armstrong, 121 M 387, 193 P2d 630 (1948).

Attorney's Fees Subordinate to Offset Judgment: While an attorney's lien is subordinate to the rights of the adverse party to offset judgments in the same actions or in actions based on the same actions or in actions based on the same transactions, it is nevertheless superior to any right to offset judgments obtained in wholly independent actions. Galbreath v. Armstrong, 121 M 387, 193 P2d 630 (1948).

EXTENT OF LIEN

Judgment on Second Trial — Deduction of Expenses for First Trial: Where, in second trial of conversion action, plaintiff obtained judgment against defendant, the attorney's lien on the judgment covered only the amount which would be realized on the judgment after costs accruing to defendant on appeal from first trial were deducted. Galbreath v. Armstrong, 121 M 387, 193 P2d 630 (1948).

Lien on Both Cause of Action and Proceeds: The lien awarded by this section to an attorney for services performed does not merely attach to his client's cause of action but as well to the proceeds of such cause of action, i.e., the judgment, successfully enforced, unaffected by any settlement between the parties. Baker v. Tullock, 106 M 375, 77 P2d 1035 (1938).

Purchased Real Estate as "Proceeds" of Judgment: Under the common law, an attorney's lien on a judgment secured for his client is ended when, by the taking over of property or otherwise, the judgment is satisfied. But under this section the lien extends to "the proceeds" of the judgment in the hands of whomsoever they may come. The mere fact that the judgment debtor's property was bought under execution by plaintiff and thus became the proceeds of the judgment obtained by him for his client and took the place thereof did not constitute a waiver of the lien. English v. Jenks, 54 M 295, 169 P 727 (1917).

FORECLOSURE OF LIEN

Foreclosure Complaint — Mortgage Tender Unnecessary Allegation: The complaint in a suit to foreclose an attorneys' lien on property upon which a prior mortgage was outstanding need not allege that tender of payment of the mortgage lien had been made to the mortgagee, since such tender is not a condition precedent to the bringing of the suit. Gilchrist v. Hore, 34 M 443, 87 P 443 (1906).

Action Against Client: An attorney seeking to enforce his lien may bring an independent action against his client or the adverse party, or both. Coombe v. Knox, 28 M 202, 72 P 641 (1903).

Analogy to Mechanics' Lien or Mortgage: An action for the foreclosure of an attorneys' lien is in every sense analogous to the foreclosure of a mechanics' lien (now referred to as a construction lien) or mortgage. Coombe v. Knox, 28 M 202, 72 P 641 (1903).

Proper Parties to Action: An action brought to foreclose an attorneys' lien is an equitable proceeding, and every person interested in the subject matter of the controversy is a proper party thereto. Coombe v. Knox, 28 M 202, 72 P 641 (1903).

NOTICE OF LIEN

Commencement of Action as Notice: Under this section there is no need to file a notice of lien, the commencement of an action or the service of an answer containing a counterclaim being sufficient notice of the lien of the attorney. Galbreath v. Armstrong, 121 M 387, 193 P2d 630 (1948).

Attorney Not Required to Give Notice: This section is itself notice to the world of the lien, and hence the attorney is not required to give notice. Walsh v. Hoskins, 53 M 198, 162 P 960 (1917).

Control of Litigation — Notice of Lien: Though, as between attorney and client, the latter controls the course of litigation, including its settlement, the parties making the settlement, as well as their assignees, are chargeable with notice of the former's statutory lien. Walsh v. Hoskins, 53 M 198, 162 P 960 (1917).

37-61-421. Attorney's or litigant's liability for excess costs.

Case Notes

Monetary Sanctions Punishment, Not Fee-Shifting Device: After a party brought a frivolous bias allegation against a judge, the judge awarded attorney fees to the other party for proceedings necessitated by the frivolous allegation. The Supreme Court affirmed the monetary sanction, noting that the more important goal of sanctions is to discourage wasteful and abusive litigation tactics. In re Estate of Boland, 2019 MT 236, 397 Mont. 319, 450 P.3d 849.

Prevailing Party Incurred Voluntary Costs — Sanctions Inappropriate: A law firm that was party to proceedings to determine a trustor's testamentary capacity filed a motion to compel payment of litigation costs from the trust. The District Court denied the motion and ruled that no other party need respond to any further filings from the law firm. The trustee nevertheless filed responses to motions by the law firm and incurred associated costs and attorney fees. The trustee ultimately prevailed on a motion for summary judgment, and the District Court required the law firm to pay one-third of the cost of the special master in the case and attorney fees incurred by the other parties. The Supreme Court reversed, finding that sanctions were inappropriate because the special master did not incur any costs related to the law firm's motion and the other parties were under no obligation to respond to the law firm's filing. Valentine E. Weisz Living Trust v. D.A. Davidson Trust Co., 2018 MT 265, 393 Mont. 219, 429 P.3d 926.

Attorney Found in Contempt and Sanctioned for Failing to Appear at Hearing — Sanctions Proper: The petitioner was found in direct contempt and sanctioned by the District Court for failing to appear for a termination hearing and was ordered to pay the costs of rescheduling the hearing. The petitioner appealed the sanctions to the Supreme Court, which affirmed, holding that the petitioner's actions had unreasonably multiplied the proceeding because the hearing had to be continued. Cross Guns v. 8th Judicial District Court, 2017 MT 144, 387 Mont. 525, 396 P.3d 133.

Sanctions Against Lawyer and Client — Procedural Concerns Not Substantial: The plaintiff sued the defendants over their attempt to collect a dental bill. The District Court ultimately granted summary judgment against the plaintiff and sanctioned her and her counsel for discovery abuses, vexatious litigation, misrepresentations, and failure to attend a pretrial conference. On appeal of the sanctions, the plaintiff's counsel argued that the District Court did not follow sanction motion procedures outlined in Rule 11, M.R.Civ.P. (Title 25, ch. 20). While the Supreme Court reversed some of the sanctions applying to vexatious litigation, it affirmed other sanctions, holding that the District Court was justified in awarding some of the sanctions under Rule 61, M.R.Civ.P., as the procedural error did not affect any party's substantial rights. Serrania v. LPH, Inc., 2015 MT 113, 379 Mont. 17, 347 P.3d 1237.

Vexatious Litigant — Costs on Appeal Awarded to Former Wife: The former husband owed his former wife more than $100,000 pursuant to a court-ordered distribution of the parties' marital estate. During an earlier appeal to the Supreme Court, the court had warned the husband that it would not tolerate any further efforts on his part to delay her receipt of the marital estate as set forth in the order. After the husband again appealed the distribution, the wife asked the Supreme Court to sanction him as a vexatious litigant, which it did, ordering him to pay her attorney fees for the appeal as to be determined by the District Court and prohibiting him from filing future appeals or civil actions against the wife without advance court approval. In re Marriage of Guill, 2014 MT 316, 377 Mont. 216, 339 P.3d 81.

Award of Attorney Fees Based on Spouse's Conduct in Dissolution Case Proper: In a dissolution proceeding, the District Court appropriately awarded attorney fees to the wife under 40-4-110 and this section when the husband frustrated the proceedings by failing to adhere to stipulations and respond to requests for discovery. In re Marriage of Lewton, 2012 MT 114, 365 Mont. 152, 281 P.3d 181.

Frivolous Lawsuit Filed by Developer Over Board of Adjustment Decision to Revoke Building Permit — Attorney Fees to Neighbors Challenging Issuance of Work Permit Granted — Zoning Regulations Not Unconstitutionally Vague: The plaintiff applied for a building permit, which was denied because the proposed structure was too large. Five months later, he applied for a different permit, which was issued. His neighbors appealed the permit after they learned the construction was not intended as an accessory to an existing unit as required. The city, through the Board of Adjustment, issued a stop-work order, and the building permit was revoked. The plaintiff then filed suit against the city and the two neighbors who appealed the permit. The District Court dismissed the suit against the neighbors and granted their motion for $25,000 in attorney fees because it found the plaintiff's case against them to be utterly frivolous. The District Court also rejected the plaintiff's argument that the zoning rules were unconstitutionally vague, concluding that a person of ordinary understanding could comprehend the rules. On appeal, the Supreme Court agreed with the District Court's analysis and affirmed. DeVoe v. Missoula, 2012 MT 72, 364 Mont. 375, 274 P.3d 752.

Fees and Costs Denied Absent Showing of Unreasonable Conduct by Counsel: Plaintiff asserted that defense counsel engaged in numerous acts of unreasonable conduct, including submission of false affidavits. Although the affidavits were not introduced at trial, plaintiff contended that counsel's actions needlessly multiplied court proceedings, justifying an award of costs and fees to plaintiff. The District Court denied the award, and on appeal the Supreme Court found no abuse of District Court discretion. The District Court determined that the proceedings were well within the bounds of normal and usual adversarial proceedings. Absent a showing by plaintiff that the alleged unreasonable conduct multiplied proceedings in a vexatious or unreasonable manner or that the affidavits were presented in bad faith or for purposes of delay, denial of fees and costs was affirmed. Larchick v. Diocese of Gt. Falls-Billings, 2009 MT 175, 350 M 538, 208 P3d 836 (2009).

Dual Representation of Two Adverse Clients Violative of Rules of Professional Conduct — Censure and Costs Appropriate: Johnson's firm agreed to represent a woman in a wrongful death action and, a few months later, determined that a second client was a potentially responsible party and filed a complaint against the second client while still representing that client on other matters. The Commission on Practice concluded that Johnson violated the Rules of Professional Conduct by undertaking dual representation of two directly adverse clients and recommended Johnson's public censure and required Johnson to pay a pro rata share of costs. Johnson appealed, asserting: (1) a reasonable belief that dual representation would not adversely affect the relationship with the second client; (2) no intentional or negligent violation of the Rules of Professional Conduct; (3) an absence of selfish or dishonest motive; (4) that both clients actively sought representation from Johnson's firm; (5) the desire to serve the needs of both clients; (6) a reputation for good character and high competence as an attorney, including practicing law for over 30 years without any prior Commission disciplinary record; and (7) a delay in bringing and processing disciplinary proceedings. The Supreme Court affirmed. It was untenable for Johnson to contend that no conflict of interest existed in asserting on the woman's behalf that the second client negligently caused the death of the woman's husband. Johnson also failed to obtain the informed consent of the second client regarding representation of the woman. The court also noted that nothing in the Rules of Professional Conduct implies that a lawyer has to knowingly violate the rules to be subject to discipline. After considering the mitigating factors, the court agreed that censure and payment of costs were appropriate. In re Johnson, 2004 MT 6, 319 M 188, 84 P3d 637 (2004), followed in In re Wenz, 2004 MT 7, 319 M 200, 87 P3d 376 (2004), and In re Marra, 2004 MT 8, 319 M 213, 87 P3d 384 (2004).

Sanctions Appropriate for Appeal Without Merit or Legal Support: Following affirmation of all underlying legal issues in this case in Lewistown Propane Co. v. Moncur, 2002 MT 349, 313 M 368, 61 P3d 780 (2002), defendants filed another appeal seeking a determination of whether the District Court improperly denied their motion seeking relief from judgment. Following examination of the record, the Supreme Court concluded that defendants' brief was less an appeal to revise a judgment based on a supportable legal analysis and precedent than it was a vexatious personal attack on the presiding District Court Judge, which unreasonably lengthened the proceedings, resulted in unnecessary costs to the parties, and unnecessarily consumed court time. Therefore, sanctions were warranted and were ordered to be paid by defendants' attorney pursuant to former Rule 32, M.R.App.P. (now superseded), and this section. Lewistown Propane Co. v. Moncur, 2003 MT 368, 319 M 105, 82 P3d 896 (2003).

Sanctions Appropriate in Easement Case When Aerial Photographs Established Long-Time Presence of Road: Aerial photographs clearly showed that a road existed in exactly the same location since 1979, yet defendant proceeded with an easement case, contending that the road did not exist in 1985. The District Court did not abuse its discretion when it assessed fees and costs against defendant because the contention was not well grounded in fact and defendant's arguments unreasonably and vexatiously multiplied the proceedings. Ponderosa Pines Ranch, Inc. v. Hevner, 2002 MT 184, 311 M 82, 53 P3d 381 (2002).

Award of Attorney Fees Based on Party's Deception, Contradiction, and Fraud and Party's Attorney's Needless Protraction of Litigation: The appellant in a probate and guardianship case was found to have employed deception, contradiction, and fraud, resulting in the expenditure of considerable time, effort, and expense in the attempt to arrive at a reasonable understanding of the condition of the guardianship estate and the ownership of estate property. The appellant's attorney was found to have taken every opportunity to obstruct and avoid a resolution of the issues by filing questionable motions for dismissal and sanctions, taking positions that were not supported by law or facts, and failing to mediate in good faith, thereby protracting the litigation at considerable expense to the respondents. The District Court ordered appellant to pay 80% of the respondents' attorney fees and costs and ordered appellant's attorney to pay the remaining 20%. There was substantial evidence in the record to support the award, which the Supreme Court affirmed. The court declined to address the reasonableness of the award because appellant did not object to the bill of expenses when given the opportunity to challenge the amount, instead challenging the reasonableness of the award for the first time on appeal. In re Estate of McDermott, 2002 MT 164, 310 M 435, 51 P3d 486 (2002).

Attorney Fees Not Awarded Absent Evidence of Multiplication of Proceedings: Kloss sought attorney fees in relation to a claim regarding the arbitration clause in a securities brokerage contract. The District Court examined the entire file, including prior transcripts and court orders, and concluded that further evidence of the fee issue was unnecessary and that attorney fees were not owing. Kloss appealed, but the Supreme Court affirmed. The District Court correctly concluded that defendant did not unreasonably or vexatiously multiply the proceedings, which is a necessary element of an award of attorney fees under this section. Kloss v. Edward D. Jones & Co., 2002 MT 129, 310 M 123, 54 P3d 1 (2002).

Unreasonable and Vexatious Multiplication of Court Proceedings — Sanctions Proper: First Interstate Bank was Bayers' court-appointed conservator. McGimpsey claimed to be Bayers' private attorney and began expressing an interest in matters involving Bayers' estate, at which point the conservator became concerned about the extent of McGimpsey's involvement in Bayers' affairs and requested in writing copies of any legal documents that McGimpsey had that may have been executed by Bayers. McGimpsey ignored the request. The conservator moved in District Court to compel production of the requested information and included a request for attorney fees necessitated by the motion. McGimpsey responded with a letter threatening the conservator's counsel with sanctions and listing complaints and criticisms of the conservator's handling of Bayers' estate. McGimpsey then moved to strike scandalous, immaterial, and irrelevant content in the conservator's motion and brief, but the motion was denied. The court instead granted the conservator's motion to compel and for attorney fees. McGimpsey filed another motion to alter or amend the order granting attorney fees. That motion was also denied, and the court ordered a hearing on the amount of sanctions to be awarded unless the parties agreed to the amount of attorney fees being assessed. The conservator agreed to the court's suggestion, but McGimpsey did not, so a hearing on the amount of fees was scheduled. McGimpsey filed another motion to vacate the hearing and to establish a discovery schedule regarding attorney fees. That motion was denied at the beginning of the hearing, and the conservator's counsel testified as to reasonable attorney fees incurred because of McGimpsey's conduct. The court issued an order requiring McGimpsey to pay Bayers' estate $1,500 in attorney fees pursuant to this section, but McGimpsey filed another motion to alter or amend the order. That motion was also denied, and McGimpsey appealed to the Supreme Court, arguing that in a civil action such as this, all discovery and discovery disputes, including sanctions, should be governed by the Montana Rules of Civil Procedure and not by this section. Former Rules 34 and 37, M.R.Civ.P. (now superseded), anticipate the existence of a dispute between opposing parties, but the underlying conservatorship proceeding in this case was not an adversarial proceeding. Formal discovery proceedings were not required for the conservator to obtain documents considered relevant to Bayers' estate. McGimpsey could have provided a straightforward answer as to whether he had any of the requested documents, but instead he chose to force a needless multiplication of proceedings and the pointless involvement of the District Court in the dispute. The court's conclusion that McGimpsey unreasonably and vexatiously prolonged the litigation was not in error. Because McGimpsey continued to force the matter to the Supreme Court, he was also held responsible under 37-61-421 for the conservator's expenses and attorney fees incurred in the appeal. In re Estate of Bayers, 2001 MT 49, 304 M 296, 21 P3d 3 (2001).

Counsel's Statements Not Considered Blatant Disregard of Motion In Limine — No Sanctions Assessed: Prior to trial, the District Court granted Renville's motion in limine to exclude from evidence hearsay statements in Renville's medical records made by Renville's mother, as well as statements from the records regarding welfare. However, during opening statements and during closing arguments, defense counsel referenced both. Renville requested a new trial and sanctions for counsel's disregard of the pretrial order and comments, but the motion was denied. On appeal, the Supreme Court declined to impose sanctions, finding that although counsel's statements appeared to violate the order in limine, they did not demonstrate a blatant disregard of the order and that, in light of other evidence, they did not unreasonably and vexatiously multiply the proceedings. Renville v. Taylor, 2000 MT 217, 301 M 99, 7 P3d 400, 57 St. Rep. 864 (2000).

Failure of Litigant to Provide Discovery and to Appear at Trial: Because husband failed to appear on the first hearing date and because he failed to provide the court and his wife with requested discovery material, the court properly ordered him to pay his wife's attorney fees and costs for the trial. His conduct was unreasonable and vexatious and multiplied the litigation by necessitating a second hearing. In re Marriage of Rager, 263 M 361, 868 P2d 625, 51 St. Rep. 91 (1994).

Attempt to Amend Complaint to Reach Insurance Coverage — Sanctions Unwarranted: The District Court assessed costs and attorney fees against defendant's attorneys who had filed an amended complaint in an attempt to present a new theory of negligence that would be covered by insurance. Even though the amended complaint did not present new issues or circumvent the insurance policy exclusions, it was not unreasonable or vexatious to attempt to amend the complaint in a way that would reach insurance coverage. Therefore, in this case, the imposition of sanctions constituted reversible error. Sheffield Ins. Co. v. Lighthouse Properties, Inc., 252 M 321, 828 P2d 1369, 49 St. Rep. 274 (1992).

Contingent Attorney Fees Recoverable: Defendant contended that an award of attorney fees was improper under this section because plaintiffs were represented on a contingent fee basis. The Supreme Court disagreed, finding that the liability for attorney fees did not arise from a fee contract between plaintiffs and their attorneys but from the liability based on the unnecessary multiplication of proceedings imposed by this section. Tigart v. Thompson, 244 M 156, 796 P2d 582, 47 St. Rep. 1532 (1990), followed in Rocky Mtn. Enterprises, Inc. v. Pierce Flooring, 286 M 282, 951 P2d 1326, 54 St. Rep. 1410 (1997).

Insurance Company as "Party" — Liability for Costs: Defendant contended that an award of attorney fees and costs under this section was improper because an insurance company was not a party within the meaning of this section and therefore could not be held responsible for attorney fees and costs. The Supreme Court affirmed the award, stating that if an insurance company may be held liable for the action of its attorney, as in Safeco Ins. Co. v. Ellinghouse, 223 M 239, 725 P2d 217 (1986), it is axiomatic that the insurer may be held responsible for costs, expenses, and attorney fees when the insurer unreasonably and vexatiously multiplies the proceedings in any case. Tigart v. Thompson, 244 M 156, 796 P2d 582, 47 St. Rep. 1532 (1990).

Withholding of Major Evidence and Violation of Principle of Pretrial Discovery — Costs Properly Awarded: Defendant contended that an award of attorney fees and costs under this section was improper because no sanctions were imposed by the trial court. The Supreme Court affirmed the award, noting that defendant's withholding of a major item of evidence prevented plaintiffs from receiving a fair trial and created unfair surprise and that the insurance company's tactic of concealing defendant's statements was at odds with the letter and spirit of pretrial discovery. The withholding was held to be unreasonable and vexatious, and the award of fees and costs was within the trial court's discretion. Tigart v. Thompson, 244 M 156, 796 P2d 582, 47 St. Rep. 1532 (1990).

Issue of Fees and Costs Not in Form of Final Order — Duty of Parties to Move for Dismissal: The District Court awarded certain fees and costs to plaintiffs pursuant to this section. However, the issue was not in the form of a final order, and thus the appeal was premature. There must be a final judgment from which an appeal may be taken before the Supreme Court is vested with jurisdiction. It is the duty of the attorneys involved in an appeal to bring the issue to the attention of the court. Tigart v. Thompson, 237 M 468, 774 P2d 401, 46 St. Rep. 974 (1989).

Sanctions Against Attorney Appropriate: Where an attorney was responsible for a retrial, attempted to cause a second mistrial, and blatantly disregarded court rulings throughout trial, sanctions were appropriate under this section. Kuhnke v. Fisher, 227 M 62, 740 P2d 625, 44 St. Rep. 895 (1987).

CHAPTER 65
ARCHITECTURE

Chapter Compiler's Comments

Severability Clause: Section 6, Ch. 138, L. 1967, was a severability clause.

Chapter Administrative Rules

Title 24, chapter 114, ARM Board of Architects and Landscape Architects.

Chapter Case Notes

No Negligence by Architect if Professional Information Not Communicated in Absence of Contract: A tennis club filed a negligence and breach of contract action against a contractor who constructed a tennis facility for the club. The contractor in turn filed a third-party negligence action against the architect who had provided preliminary design parameters and building specifications for the facility. The District Court summarily dismissed the third-party claim, and the contractor appealed, but the Supreme Court affirmed. Applying Jim's Excavating Serv., Inc. v. HKM Associates, 265 M 494, 878 P2d 248 (1994), and Restatement (Second) of Torts 552 (1976), the court held that the architect owed no duty of care to the contractor because the contractor had no contract for the architect's services and failed to prove that the architect communicated professional information with the intention that the information be relied upon by the contractor. Absent a duty of care, there was no breach, so the third-party action failed as a matter of law, and summary judgment was proper. Glacier Tennis Club at the Summit, LLC v. Treweek Constr. Co., Inc., 2004 MT 70, 320 M 351, 87 P3d 431 (2004).

Architects' Handbook as Standard of Duty — Violation Not Negligence Per Se: Standards set out in the Architects' Handbook of Professional Practice were considered as evidence of a duty on the part of architects; however, violation of the standards did not constitute negligence per se. Taylor, Thon, Thompson & Peterson v. Cannaday, 230 M 151, 749 P2d 63, 45 St. Rep. 102 (1988).

Retention of Building Materials by Architects Not Violative of Professional Conduct or Consumer Protection Act: Architects who retained property and building materials from a building site after defendant failed to make contractual payments did not violate standards of professional conduct or commit unfair practices under the Montana Unfair Trade Practices and Consumer Protection Act of 1973. Taylor, Thon, Thompson & Peterson v. Cannaday, 230 M 151, 749 P2d 63, 45

Architect Liable for Inadequate Specifications: There was sufficient evidence presented to the District Court to support its findings that the architect's water system specifications for a new school building were inadequate. A contractor is not responsible for errors or defects in the plans and is not liable, absent negligence on his part, when the owner's plans and specifications prove defective. Ace Plumbing & Heating, Inc. v. School District, 204 M 81, 662 P2d 1327, 40 St. Rep. 678 (1983). St. Rep. 102 (1988).

Part 1
General

Part Attorney General's Opinions

Authority of Board to Regulate Practice: Montana law proscribes the unauthorized practice of architecture as well as the unauthorized use of the title "architect" or similar words implying that a person is engaged in the practice of architecture. The Board of Architects (now Board of Architects and Landscape Architects) may interpret statutes that the Board is to enforce, either through rulemaking or the contested case process. The authority of the Board of Architects (now Board of Architects and Landscape Architects) extends to the person performing architectural services, not to the person for whom those services are performed, and includes regulation of the practice of architecture and the use of the title "architect" or similar words. 47 A.G. Op. 5 (1997).

37-65-101. Purpose.

Attorney General's Opinions

Authority of Board to Regulate Practice: Montana law proscribes the unauthorized practice of architecture as well as the unauthorized use of the title "architect" or similar words implying that a person is engaged in the practice of architecture. The Board of Architects (now Board of Architects and Landscape Architects) may interpret statutes that the Board is to enforce, either through rulemaking or the contested case process. The authority of the Board of Architects (now Board of Architects and Landscape Architects) extends to the person performing architectural services, not to the person for whom those services are performed, and includes regulation of the practice of architecture and the use of the title "architect" or similar words. 47 A.G. Op. 5 (1997).

37-65-102. Definitions.

Compiler's Comments

2007 Amendment: Chapter 11 in definition of board after "of architects" inserted "and landscape architects"; and made minor changes in style. Amendment effective July 1, 2007.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: In (5), substituted definition of practice of architecture for former text that read: "rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other services in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (4); changed internal references to the department and the board.

Administrative Rules

ARM 24.114.301 Definitions.

37-65-103. Exemptions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 2
Board of Architects and Landscape Architects

Part Administrative Rules

Title 24, chapter 114, subchapter 1, ARM Organizational rule.
Title 24, chapter 114, subchapter 2, ARM Procedural rules.
Title 24, chapter 114, subchapter 4, ARM General provisions.

37-65-201. Organization — records.

Compiler's Comments

2001 Amendment: Chapter 492 in (1) substituted text regarding officers to be elected for former text that read: "The board must, during the first week in April of each year, elect from among its number a president, secretary, and treasurer and must have a seal"; deleted former (2) and (3) that read: "(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.

(3) The board shall meet at places the board determines during the first week of April of each year and at other times"; in (3) in first sentence near middle after "with the name" substituted "of the applicant" for "and age of the applicants, the number of years spent in the study of architecture"; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 24.114.401 Fee schedule.

37-65-202. Compensation of board members — expenses.

Compiler's Comments

1997 Amendment: Chapter 481 after "compensation" substituted "and travel expenses as provided in 37-1-133" for "at the rate provided in 37-1-123 and the actual cost of mileage or other reasonable transportation costs, meals, and lodging when engaged in official board business".

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1983 Amendment: After "compensation" substituted language (see 1983 Session Law) for former text that read: "and travel expenses as provided for in 37-1-133".

1981 Amendment: Substituted section (see 1981 Session Law) for former text that read: "Each member of the board is allowed the sum of $25 per day plus mileage and travel expenses as provided for in 2-18-501 through 2-18-503, while in the discharge of his actual duties".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-65-203. Exclusive licensing jurisdiction — no additional fee.

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-65-204. Rulemaking.

Compiler's Comments

2007 Amendment: Chapter 11 at beginning after "board" deleted "of architects" and near middle after "enforcement of" inserted "Title 37, chapter 66, and". Amendment effective July 1, 2007.

Statement of Intent: The statement of intent attached to Ch. 490, L. 1983, which enacted this section, provided: "A statement of intent is required for this bill because it grants the Board of Architects the authority to adopt rules implementing Title 37, Chapter 65.

Currently, the chapter of state statutes governing the licensing of architects contains no general grant of rulemaking authority such as those available to most other state agencies and licensing boards. The Board of Architects must therefore rely on the grants of rulemaking authority applicable to all boards contained in 37-1-131 which allows only the adoption of rules "governing licensing, certification, registration, and conduct of" architects, upon 37-1-136 allowing the board to adopt rules relating to disciplinary action, and upon 2-4-201 requiring every agency to adopt procedural rules. Thus, the board has no authority to adopt rules unauthorized by those sections of law. HB 490 grants the board general rulemaking authority to adopt any rule "necessary" to implement all previously existing statutes contained in Title 37, Chapter 65. Any such rules must be adopted under the Montana Administrative Procedure Act."

Administrative Rules

Title 24, chapter 114, ARM Board of Architects and Landscape Architects.

Part 3
Licensing

Part Administrative Rules

Title 24, chapter 114, subchapter 5, ARM Licensing.

37-65-301. License required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Changed "registered architect" to "licensed architect".

Attorney General's Opinions

Authority of Board to Regulate Practice: Montana law proscribes the unauthorized practice of architecture as well as the unauthorized use of the title "architect" or similar words implying that a person is engaged in the practice of architecture. The Board of Architects (now Board of Architects and Landscape Architects) may interpret statutes that the Board is to enforce, either through rulemaking or the contested case process. The authority of the Board of Architects (now Board of Architects and Landscape Architects) extends to the person performing architectural services, not to the person for whom those services are performed, and includes regulation of the practice of architecture and the use of the title "architect" or similar words. 47 A.G. Op. 5 (1997).

37-65-302. Licensure limited to individuals.

Compiler's Comments

1983 Amendment: Substituted references to licensed architects for references to registered architects.

37-65-303. Application — examination — issuance of license.

Compiler's Comments

2003 Amendment: Chapter 196 in (1) in second sentence before "examination" deleted "written"; at end of (2) deleted "which may be granted only on the consent of not less than two members of the board"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 492 in (2) at end after "members of the board" deleted "attested by the secretary, and have the seal of the board attached"; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: In (1) and (2), substituted "license" for "certificate".

Statement of Intent: The statement of intent attached to SB 498 (Ch. 388, L. 1979) provided in part: "Section 6 allows the board to modify the standard national council of architectural registration board's examination and grading procedure. It is contemplated that the board may, in its discretion, adopt rules to modify specific questions for purposes of tailoring them to the Montana situation."

Administrative Rules

ARM 24.114.501 Examination.

37-65-307. Deposit of license fees.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 24.114.401 Fee schedule.

37-65-308. Seal of architect.

Compiler's Comments

2001 Amendment: Chapter 492 substituted text regarding information to be contained in architect's seal for former text that read: "Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words "Licensed Architect, State of Montana", with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state." Amendment effective October 1, 2001.

Administrative Rules

ARM 24.114.402 Architect seal.

Attorney General's Opinions

Seal Not Required for Private Buildings: "Public" in 18-2-122 refers only to the buildings of the state and its political subdivisions. Therefore, plans and specifications for construction of privately owned buildings need not bear seals of specified professional persons. 36 A.G. Op. 52 (1976).

37-65-310. License verification.

Compiler's Comments

Effective Date: Section 77(2), Ch. 492, L. 2001, provided that this section is effective October 1, 2001.

37-65-311. Emeritus status.

Compiler's Comments

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

Effective Date: This section is effective October 1, 2007.

Administrative Rules

ARM 24.114.515 Architect emeritus status.

CHAPTER 66
LANDSCAPE ARCHITECTURE

Chapter Administrative Rules

Title 24, chapter 114, ARM Board of Architects and Landscape Architects.

Part 1
General

37-66-103. Definitions.

Compiler's Comments

2007 Amendment: Chapter 11 in definition of board after "board of" inserted "architects and" and at end substituted "2-15-1761" for "2-15-1762"; in definition of landscape architect after "holds a" substituted "license" for "certificate"; and made minor changes in style. Amendment effective July 1, 2007.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-66-104. Acts declared unlawful.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-66-105. Exemptions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (3), before "land surveyors", inserted "professional".

Part 3
Licensing

Part Compiler's Comments

Grandfather Clause: Section 7, Ch. 476, L. 1975, read: "At any time within one (1) year after this act becomes effective, upon application therefor and payment of the application and certificate fee, the board shall issue a certificate of registration without oral or written examination to any practicing landscape architect of good character, who qualifies under the provisions of section 66-3805 (now 37-66-304), who shall submit under oath evidence satisfactory to the board that he was practicing landscape architecture at the time this act became effective, and has had responsible charge of work of character satisfactory to the board."

Part Administrative Rules

Title 24, chapter 114, subchapter 4, ARM General provisions.

Title 24, chapter 114, subchapter 14, ARM Licensing for landscape architects.

37-66-301. License required.

Compiler's Comments

2001 Amendment: Chapter 492 near middle after "practice landscape architecture" deleted "for hire" and near end substituted "licensed" for "registered"; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 24.114.1401 Landscape architect applications.

37-66-302. Illegal use of title.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-66-303. Licensing restricted to individuals — partnerships — local business licensing.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-66-304. Qualifications and application for licensure.

Compiler's Comments

2005 Amendment: Chapter 467 in (2) after "and" deleted "written" and after "requirements" substituted "prescribed" for "established". Amendment effective July 1, 2005.

2001 Amendment: (Temporary version) Chapter 492 inserted (1) regarding application to department and examination; and made minor changes in style. Amendment effective October 1, 2001, and terminates September 30, 2005.

(Version effective October 1, 2005) Inserted (1) regarding application to department for licensure; and in (2) after "Each applicant" substituted remainder of sentence concerning qualifications for licensure for "must be admitted to the examination without prerequisite qualifications".

Administrative Rules

ARM 24.114.1401 Landscape architect applications.
ARM 24.114.1402 Education and experience — landscape architect licensure.
ARM 24.114.1404 Landscape architect licensure by endorsement.

37-66-308. Display of license — seal of landscape architect.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: At end of (2), before "land surveyor", inserted "professional".

Administrative Rules

ARM 24.114.1410 Landscape architect seal.

37-66-309. Deposit of license fees.

Compiler's Comments

Effective Date: Section 26, Ch. 11, L. 2007, provided: "[This act] is effective July 1, 2007."

Administrative Rules

ARM 24.114.401 Fee schedule.

CHAPTER 67
ENGINEERS AND LAND SURVEYORS

Chapter Administrative Rules

Title 24, chapter 183, ARM Board of Professional Engineers and Professional Land Surveyors.

Part 1
General

37-67-101. Definitions.

Compiler's Comments

2015 Amendment: Chapter 4 inserted definition of branch office; and made minor changes in style. Amendment effective February 12, 2015.

2001 Amendments — Composite Section: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

Chapter 492 inserted definition of engineering survey; in definition of practice of land surveying inserted (h) regarding property line or boundary; in definition of professional engineer near end after "who has been" deleted "registered and"; in definition of professional land surveyor in (a) near beginning after "has been" deleted "registered and"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 108 substituted engineer intern for engineer-in-training as defined term; substituted land surveyor intern for land surveyor-in-training as defined term; and made minor changes in style.

1985 Amendment: In (4) in middle, substituted "technique, analysis, and application of measuring land, skilled and educated in the principles of mathematically related physical and applied sciences" for "technique of measuring land, educated in the basic principles of mathematics, related physical and applied sciences"; in (7) before "performance", deleted "adequate" and before "knowledge", inserted "special"; in (7)(c) at end, inserted "and coordinate systems"; in (9) after "direct", inserted "charge and"; and in (1), (4), and (9), before "land surveyor(s)", inserted "professional".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Administrative Rules

ARM 24.183.301 Definition of responsible charge for professional engineers and land surveyors.
ARM 24.183.1108 General principals.
ARM 24.183.1109 Geomatics definitions.
ARM 24.183.1110 Activities included within surveying practice.

37-67-102. Representation as practitioner to be considered as practice.

Compiler's Comments

2001 Amendment: Chapter 492 in (1)(b) near end after "professional engineer or is" substituted "licensed" for "registered"; and made minor changes in style. Amendment effective October 1, 2001.

1985 Amendment: In (2) in two places inserted "professional" before "land surveyor".

Part of Section Not Codified: A portion of section 66-2350(3), R.C.M. 1947, specifying what persons shall be construed to practice engineering, has not been codified in the MCA, as the Code Commissioner determined it to be redundant with subsection (2) of this section. However, it has not been repealed and is still valid law. Citation may be made to sec. 17, Ch. 366, L. 1975.

37-67-103. Exemptions.

Compiler's Comments

2015 Amendment: Chapter 4 in introductory clause substituted "licensure" for "coverage". Amendment effective February 12, 2015.

2001 Amendment: Chapter 492 in (3) near beginning and end after "of a person holding a" substituted "license" for "certificate of registration"; and made minor changes in style. Amendment effective October 1, 2001.

1985 Amendment: Deleted former (5) that read: "the practice of professional engineering or land surveying in this state by a firm, partnership, corporation, or joint-stock association or by its members, officers, or employees on its behalf, if each person personally supervising and in direct charge of all activities of the firm, partnership, corporation, or joint-stock association which constitutes the practice is a professional engineer or land surveyor holding a certificate of registration under this chapter".

Administrative Rules

ARM 24.183.801 Comity consideration for professional land surveyors.
ARM 24.183.1111 Activities excluded from surveying practice.

Part 2

Board of Professional Engineers and Professional Land Surveyors

Part Administrative Rules

Title 24, chapter 183, subchapter 1, ARM Organizational rules.
Title 24, chapter 183, subchapter 2, ARM Procedural rules.

37-67-201. Organization — meetings — seal.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former (3) that read: "(3) A quorum of the board shall consist of not less than five members"; and made minor changes in style. Amendment effective October 1, 2001.

37-67-202. Rulemaking.

Compiler's Comments

2015 Amendment: Chapter 4 after "rules" deleted "including rules of procedure"; and made minor changes in style. Amendment effective February 12, 2015.

1995 Amendment: Chapter 429 after "procedure" deleted "not inconsistent with the constitution and laws of this state, which may be"; deleted (2) that read: "(2) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may subpoena witnesses and compel their attendance and also may require the production of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person requiring his attendance before such authority and there to testify or to produce such books, papers, and documents as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Administrative Rules

Title 24, chapter 183, ARM Board of Professional Engineers and Professional Land Surveyors.

37-67-203. Compensation of board members — expenses.

Compiler's Comments

1981 Amendment: Substituted section (see 1981 Session Law) for former text that read: "Each member of the board shall receive per diem when actually attending to the work of the board or any of its committees and for the time spent in necessary travel. Such per diem shall be fixed by the board in its sound discretion, but it shall not exceed $25 per day. In addition thereto, each member shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, involved in carrying out the provisions of this chapter".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-67-204. Record of proceedings — register of applicants.

Compiler's Comments

2001 Amendment: Chapter 492 in (2) in introductory clause after "register of applicants for" substituted "licensure" for "registration"; in (2)(h) after "whether a" substituted "license" for "certificate of registration"; and made minor changes in style. Amendment effective October 1, 2001.

Part 3
Licensing

37-67-301. License required to practice or offer to practice.

Compiler's Comments

2001 Amendment: Chapter 492 in first sentence near end after "to practice and is" and in second sentence near end after "the person has been" substituted "licensed" for "registered"; and made minor changes in style. Amendment effective October 1, 2001.

1985 Amendment: Near end, before "land surveyor", inserted "professional".

Administrative Rules

Title 24, chapter 183, subchapter 5, ARM Licensing.
Title 24, chapter 183, subchapter 7, ARM Licensure of professional engineers.
Title 24, chapter 183, subchapter 8, ARM Licensure of professional land surveyors.
Title 24, chapter 183, subchapter 22, ARM Unprofessional conduct.

37-67-304. Local government not to impose fee or examination.

Compiler's Comments

2001 Amendment: Chapter 492 at beginning substituted "A license fee" for "A registration or license fee" and after "local government on a person" substituted "licensed" for "registered". Amendment effective October 1, 2001.

1995 Amendment: Chapter 108 after "license fee" substituted "or examination" for "or tax", substituted "by a local government" for "by a municipality or by any other political subdivision of the state", and after "chapter" inserted "to practice engineering or land surveying"; and made minor changes in style.

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-67-312. Licensure of professional engineers without examination by comity.

Compiler's Comments

2015 Amendment: Chapter 4 deleted former (1) and (2) that read: "(1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be licensed without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering and surveying and whose qualifications meet the requirements of this chapter may upon application be licensed without further examination"; in first sentence inserted "or certificate of registration" and substituted "provided in 37-67-323, and has passed the principles and practices of engineering examination" for "provided in 37-67-306, and has taken and passed the examinations provided for in 37-67-306 and 37-67-311. The experience requirements of 37-67-306 may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice engineering"; inserted last sentence concerning initial licensure in another state; and made minor changes in style. Amendment effective February 12, 2015.

2011 Amendment: Chapter 100 inserted (3) regarding licensing of person licensed in another state or country. Amendment effective October 1, 2011.

2001 Amendment: Chapter 492 in (1) and (2) near end after "may upon application be" substituted "licensed" for "registered". Amendment effective October 1, 2001.

1995 Amendment: Chapter 108 in (2) substituted "national council of examiners for engineering and surveying" for "national council of engineering examiners"; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

Part of Section Not Codified: Section 66-2357(i)(a)(v), R.C.M. 1947, a temporary provision providing for licensure of persons with 8 or more years experience in engineering work, has not been codified in the MCA. However, the provision has not been repealed and is still valid law. Citation may be made to sec. 5, Ch. 366, L. 1975.

Administrative Rules

ARM 24.183.701 Comity for professional engineers.

37-67-313. Licensure of professional land surveyors by comity.

Compiler's Comments

2015 Amendment: Chapter 4 deleted former (1) that read: "(1) A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, the person may be asked to meet the conditions for taking examinations and to take them as the board considers necessary to determine the person's qualifications. In any event, the person shall pass a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state"; in first sentence inserted "or certificate of registration" and substituted "provided in 37-67-325, and has passed the principles and practices of surveying examination and the Montana state-specific land surveyor examination" for "provided in 37-67-309, has taken and passed the examinations provided for in 37-67-309 and 37-67-311, and has taken and passed a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state"; in second sentence substituted "37-67-325" for

"37-67-309"; inserted last sentence concerning initial licensure in another state; and made minor changes in style. Amendment effective February 12, 2015.

2011 Amendment: Chapter 100 inserted (2) regarding licensing of person licensed in another state or country; and made minor changes in style. Amendment effective October 1, 2011.

1995 Amendment: Chapter 108 near end, after "written examination", deleted "of not less than 8 hours' duration"; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1985 Amendment: In first sentence substituted language (see 1985 Session Law) for former text that read: "A person holding a certificate of registration or comparable qualifications to engage in the practice of land surveying issued from a state, territory, or possession of the United States will be given comity consideration"; and near beginning of second sentence, after "asked to", inserted "meet the conditions for taking and".

Administrative Rules

ARM 24.183.801 Comity consideration for professional land surveyors.

37-67-314. Issuance of licenses — seal of professional engineer or professional land surveyor.

Compiler's Comments

2015 Amendment: Chapter 4 in (1) in first sentence substituted "authorizing the applicant" for "giving the licensee proper authority" and in second sentence substituted "and must include the full name and license number of the licensee" for "It must give the full name and serial number of the licensee and must be signed by the presiding officer and the secretary under the seal of the board"; deleted former (2) through (4) that read: "(2) A license is prima facie evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the license remains unrevoked or unexpired.

(3) Each licensee may, upon licensure, obtain a seal of a design authorized by the board, bearing the licensee's name, serial number, and the legend "professional engineer" or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a licensee must be signed with a written signature, dated, and stamped with the seal or a seal facsimile when issued. After the expiration of a license, it is unlawful for the licensee whose license has lapsed to affix or permit the seal and signature or seal facsimile to be affixed to any:

(a) plans, specifications, plats, drawings, reports, design information, or calculations; or

(b) projects for which the licensee was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card must indicate that the applicant's name and status has been recorded with the board. The enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor"; inserted (2), (3), and (4) concerning a seal, prima facie evidence, and unlawful actions; and made minor changes in style. Amendment effective February 12, 2015.

2001 Amendment: Chapter 492 throughout section substituted reference to license for reference to certificate of registration or certificate and substituted reference to licensee for reference to registrant; in (3) in first sentence substituted "licensure" for "registration" and at beginning of third sentence inserted "After the expiration of a license" and after "unlawful for" substituted "the licensee whose license has lapsed" for "a registrant"; in (3)(b) substituted "projects for which the licensee" for "after the expiration of a certificate or for projects for which the registrant"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 108 in (1), in first sentence, substituted "authority to engage in the practice of engineering or the practice of land surveying" for "authority to practice his profession"; in (4), in first sentence, substituted "engineer intern" for "engineer-in-training" and substituted "land surveyor intern" for "land surveyor-in-training", in second sentence, after "name", inserted "and status", and in third sentence, before "enrollment card", deleted "engineer-in-training or land surveyor-in-training"; and made minor changes in style.

1985 Amendment: In (3) after "the legend "professional engineer"", substituted language of remainder of subsection (see 1985 Session Law) for former text that read: "and/or "land surveyor". Plans, specifications, plats, and reports prepared by a registrant shall when issued be certified, signed, and stamped with the seal or facsimile thereof. It shall be unlawful for a registrant to affix or permit his seal and signature or facsimile thereof to be affixed to any plans, specifications, plats, or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this chapter"; and throughout section, before "land surveyor", inserted "professional".

Administrative Rules

ARM 24.183.511 License seal.
ARM 24.183.1104 Uniform standards for certificates of survey.
ARM 24.183.1107 Uniform standards for final subdivision plats.

Attorney General's Opinions

Seal Not Required for Private Buildings: "Public" in 18-2-122 refers only to the buildings of the state and its political subdivisions. Therefore, plans and specifications for construction of privately owned buildings need not bear seals of specified professional persons. 36 A.G. Op. 52 (1976).

37-67-317. Deposit of moneys collected.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-67-322. Application — contents — fees.

Compiler's Comments

Effective Date: Section 18, Ch. 4, L. 2015, provided that this section is effective on passage and approval. Approved February 12, 2015.

37-67-323. Qualifications of applicant for examination and licensure as professional engineer.

Compiler's Comments

Effective Date: Section 18, Ch. 4, L. 2015, provided that this section is effective on passage and approval. Approved February 12, 2015.

37-67-324. Qualifications of applicant for certification as engineer intern.

Compiler's Comments

Effective Date: Section 18, Ch. 4, L. 2015, provided that this section is effective on passage and approval. Approved February 12, 2015.

37-67-325. Qualifications of applicant for examination and licensure as professional land surveyor.

Compiler's Comments

Effective Date: Section 18, Ch. 4, L. 2015, provided that this section is effective on passage and approval. Approved February 12, 2015.

37-67-326. Qualifications of applicant for examination and certification as land surveyor intern.

Compiler's Comments

Effective Date: Section 18, Ch. 4, L. 2015, provided that this section is effective on passage and approval. Approved February 12, 2015.

37-67-327. Examinations — fees — third-party services.

Compiler's Comments

Effective Date: Section 18, Ch. 4, L. 2015, provided that this section is effective on passage and approval. Approved February 12, 2015.

37-67-328. Certificate of authorization.

Compiler's Comments

Effective Date: Section 18, Ch. 4, L. 2015, provided that this section is effective on passage and approval. Approved February 12, 2015.

37-67-329. Emeritus status.

Compiler's Comments

Effective Date: Section 18, Ch. 4, L. 2015, provided that this section is effective on passage and approval. Approved February 12, 2015.

37-67-331. Revocation, suspension, restriction, or limitation of license — grounds.

Compiler's Comments

2015 Amendment: Chapter 4 in first sentence substituted "restrict or limit" for "refuse to renew" and after "responsible for" deleted former (1)(a) that read: "(a) fraud or deceit in obtaining a license"; in (1) inserted "professional" in two places and after "land surveying" deleted "as a licensed professional engineer or professional land surveyor"; deleted former (1)(c) that read: "(c) a felony"; in (3) substituted "state laws and rules pertaining to the practice of professional engineering or professional land surveying" for "with the Corner Recordation Act if the person is a professional land surveyor"; deleted former (2) through (5) that read: "(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the board. For purposes of investigation under this section, the board may require that a licensee meet with the board.

(3) The board may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand the licensee or to revoke, suspend, or refuse to renew the license.

(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand the licensee or suspend, refuse to renew, or revoke the license of the licensed professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a license to a person whose license has been revoked if five or more members of the board vote in favor of the reissuance"; and made minor changes in style. Amendment effective February 12, 2015.

2001 Amendment: Chapter 492 throughout section substituted reference to license for reference to certificate or certificate of registration, reference to licensee for reference to registrant, and reference to licensed for reference to registered; in (1) near beginning after "may reprimand" inserted "a licensee"; in (3) and (4) near middle after "reprimand" inserted reference to licensee; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 108 in (1) substituted "responsible for" for "guilty of"; at end of third sentence in (2), after "board", deleted "and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend, or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action"; at end of (3) inserted "the certificate of registration"; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1985 Amendment: Inserted last sentence of (2) allowing Board to require registrant to meet with it for investigation purposes; and in four places throughout section, before "land surveyor(s)", inserted "professional".

CHAPTER 68
ELECTRICIANS AND ELECTRICAL SAFETY

Chapter Administrative Rules

Title 24, chapter 141, ARM State Electrical Board.

Part 1
General

37-68-101. Purpose.

Compiler's Comments

2009 Amendment: Chapter 257 in (5) after "installations" deleted "and electrical products made and sold"; and made minor changes in style. Amendment effective October 1, 2009.

37-68-102. Definitions.

Compiler's Comments

2017 Amendment: Chapter 12 inserted definitions of grid-tied generator and utility distribution facility; and made minor changes in style. Amendment effective February 13, 2017.

Applicability: Section 4, Ch. 12, L. 2017, provided: "[This act] applies to electrical work performed on or after July 1, 2017."

2009 Amendment: Chapter 257 inserted definitions of electrical construction, journeyman level experience, practical experience, and public utility; in definition of electrical contractor substituted (b) establishing exemption from definition for former exemption that read: "A registered electrical engineer who plans or designs electrical installations is not an electrical contractor"; and made minor changes in style. Amendment effective October 1, 2009.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Administrative Rules

ARM 24.141.301 Definitions.

37-68-103. Exemptions.

Compiler's Comments

2017 Amendment: Chapter 12 in (3)(a) inserted exception clause; inserted (3)(b) concerning grid-tied generator; and made minor changes in style. Amendment effective February 13, 2017.

Applicability: Section 4, Ch. 12, L. 2017, provided: "[This act] applies to electrical work performed on or after July 1, 2017."

2015 Amendments — Composite Section: Chapter 14 inserted (7) providing an exemption from licensing and inspection for apprentices; and inserted (8) providing an exemption for students enrolled in certain electrician training programs. Amendment effective July 1, 2015.

Chapter 90 inserted (9) concerning exemption for individuals performing certain electrical work. Amendment effective July 1, 2015.

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 257 in (4) near beginning substituted "may apply for licensure as an electrical contractor" for "may engage in business as an electrical contractor without an electrician's license", and near end before "journeyman electrician" inserted "licensed"; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (1) inserted second through fourth sentences relating to inclusions in "communications equipment" and to work in buildings owned by a public utility; and in (2), before "ordinary and customary", substituted "when" for "or to" and at end inserted "are performed".

Administrative Rules

ARM 24.141.501 Electrician applications.

Part 2

State Electrical Board

Part Administrative Rules

Title 24, chapter 141, subchapter 1, ARM Organization rules.

Title 24, chapter 141, subchapter 2, ARM Procedural rules.

37-68-201. Organization — meetings — rulemaking power — seal.

Compiler's Comments

2009 Amendment: Chapter 257 in (3)(a) near end before "electricians" inserted "residential"; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 467 in (3) substituted "shall" for "may"; in (3)(a) after "examination" deleted "and licensing"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 deleted former (3) that read: "(3) A majority of the members of the board shall constitute a quorum for transaction of business"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 429 in (4)(a), after "contractors", deleted "for continuing education"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1987 Amendment: In (4)(a) inserted reference to rules for continuing education.

1987 Statement of Intent: The statement of intent attached to Ch. 245, L. 1987, provided: "A statement of intent is required for this bill because section 4 [37-68-201] expands the rulemaking authority of the state electrical board to set requirements for continuing education for master and journeyman electricians.

The intention of the legislature is that the board adopt rules to require a master or journeyman electrician to attend classes to inform him of changes in the codes and safety standards, developments of new equipment, and other matters pertinent to the performance of his work."

1979 Statement of Intent: The statement of intent attached to SB 390 (Ch. 546, L. 1979) provided in part: "Section 3 defines and, together with other sections, provides for regulation of a new classification of license, the residential electrician's license. Rules relating to the residential license should cover all areas now covered by board rules for journeyman and master electricians. The rules should set forth the basic content and the procedures and passing examination for the residential license. The examination should be tailored to meet the requirements for work as a residential electrician.

When appropriate and in conformance with law, the board may amend existing rules to make them applicable to the residential license."

Section 3 appears to refer to 37-68-102, as amended by Ch. 546. Section 37-68-201 was not amended by Ch. 546.

Administrative Rules

Title 24, chapter 141, ARM State Electrical Board.

37-68-202. Compensation and expenses of board members.

Compiler's Comments

1981 Amendment: Substituted section (see 1981 Session Law) for former text that read: "Each member of the board shall receive $25 per day for each day served in the discharge of his duties, together with travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3
Licensing

Part Administrative Rules

ARM 24.141.405 Fee schedule.

Title 24, chapter 141, subchapter 5, ARM Licensing.

Part Case Notes

Failure to Conform With Literal Language of Administrative Rule Not Illegal and Therefore Not Justification for Breach of Contract: Lewis subcontracted to do the electrical work on five units being built by Huyser. In the first four units, some of the rough-in wiring was covered, but the electrical inspector did not require that all the wiring be visible even though the literal language of the administrative rule indicated that it should be. On the fifth unit, shelving had been installed before the inspection. Lewis insisted that it all be taken down, claiming that he could lose his license if it was not. Huyser had some of the shelving removed, exposing some of the rough-in wiring. Lewis refused to complete the work, and Huyser hired another electrician to complete the job. Lewis sued for payment, and Huyser counterclaimed. The lower court found for Huyser on the basis that the inspector had informed Lewis that he would not lose his license and that the inspector would accept part of the rough-in wiring being exposed. The Supreme Court affirmed, holding that the administrative rule should be reasonably interpreted to allow for waiver by the inspector of the requirement that all rough-in wiring be exposed. The Supreme Court further held that violation of the rule was not a statutory ground for losing an electrical license. The rule having been waived, the contract was not contrary to the policy of express law so that Lewis had a good faith duty to perform the remainder of the contract. Lewis v. Huyser, 264 M 141, 870 P2d 95, 51 St. Rep. 192 (1994).

37-68-301. License required to engage in electrical work.

Compiler's Comments

2009 Amendment: Chapter 257 in (1) near beginning inserted "or hold out to the public that the person is an electrician"; in (2) near middle after "license" deleted "or proof of licensure" and deleted former second sentence that read: "Acceptable proof of licensure must be determined by the board and made known to each licensee by the department when a license is issued"; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 402 inserted (2) regarding license and proof of insurance; and made minor changes in style. Amendment effective July 1, 1999.

1993 Amendment: Chapter 31 inserted (2) requiring a license or permit of a person wishing to perform electrical work prior to referral for employment by an employment agency or labor union; and made minor changes in style.

Administrative Rules

ARM 24.141.403 Licensee responsibilities.

ARM 24.141.504 Licensure by reciprocity or endorsement.

37-68-302. Unauthorized use of title.

Compiler's Comments

2009 Amendment: Chapter 257 in list of professions inserted "master electrician", "journeyman electrician", "residential electrician", "licensed electrician", and "electrician", and before "residential electrician" inserted "licensed"; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 24.141.403 Licensee responsibilities.

37-68-304. Master electricians — application — qualifications — contents of examination — fees.

Compiler's Comments

2009 Amendment: Chapter 257 in (1) in introductory clause inserted "at least one of the following"; in (1)(a) substituted minimum of 2,000 hours of experience for 1 year of experience, and after "experience" deleted "or that the applicant is a graduate of an electrical trade school and has at least 4 years of legally obtained practical experience in electrical work"; in (1)(b) substituted "8,000 hours of legally obtained journeyman level experience" for "5 years of legally obtained practical experience"; in (2) in second sentence after "shall" deleted "not less than 30 days prior to a scheduled examination", and deleted former fourth sentence that read: "The place of examinations must be designated by the board, and examinations must be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants"; in (3) in introductory clause increased number of questions from 30 to 80 and after "application" inserted "skills"; inserted (3)(b) relating to board rules and laws under Title 37; deleted former (3)(b) through (3)(f) that read: "(b) cost estimating for electrical installments;

(c) procurement and handling of materials needed for electrical installations and repair;

(d) reading blueprints for electrical work;

(e) drafting and layout of electrical circuits; and

(f) knowledge of practical electrical theory"; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 467 in (1) in three places before "practical" inserted "legally obtained"; in (2) after "application on" substituted "a form" for "forms prescribed by the board and" and after "department" inserted "submit appropriate fees, and satisfactorily pass an examination prescribed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (2) at end of first sentence deleted "together with the examination fee", in second sentence in two places before "examination" deleted "written", and at end of third sentence deleted "and shall authorize the department to return the applicant's examination fee"; in (3) at beginning before "examination" deleted "written"; inserted (4) concerning adoption of rules establishing fees; and made minor changes in style. Amendment effective October 1, 2003.

1987 Amendment: In (1), near end, substituted "planning, laying out, or supervising the installation and repair of wiring" for "planning, laying out, supervising, or installing wiring".

Administrative Rules

ARM 24.141.405 Fee schedule.

ARM 24.141.501 Electrician applications.

37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination.

Compiler's Comments

2009 Amendment: Chapter 257 in (1) in introductory clause inserted "one of the following"; in (1)(a) substituted "completion of an approved apprenticeship program in the electrical trade" for "4 years of apprenticeship in the electrical trade"; inserted (1)(b) relating to training program conducted by bona fide union or trade association; in (1)(c) substituted 8,000 hours of experience for 4 years of experience; inserted (1)(d) relating to work in electrical maintenance field of 20,000 hours of which 8,000 hours are practical experience; in (2) in second sentence increased number of questions from 30 to 60 and near end after "application" inserted "skills"; deleted former (2)(a) that read: "(a) the Ohm's law"; inserted (2)(b) related to board rules and laws under Title 37; deleted former (2)(c) that read: "(c) layout and practical installation of electrical circuits"; in (3) in introductory clause inserted "at least one of the following"; in (3)(a) substituted "completion of an approved residential electrician apprenticeship program" for "at least 2 years of apprenticeship in the electrical trade"; in (3)(b) substituted 4,000 hours of experience for 2 years of experience; inserted (3)(c) related to training program conducted by bona fide union or trade association; inserted (3)(d) relating to work in electrical maintenance field of 20,000 hours of which 8,000 hours are practical experience; in (4) in second sentence increased number of questions from 30 to 50 and after "application" inserted "skills"; deleted former (4)(a) that read: "(a) the Ohm's law"; inserted (4)(b) related to board rules and laws under Title 37; deleted former (4)(c) that read: "(c) layout and practical installation of electrical circuits"; inserted definition of electrical maintenance; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 467 in (1) and in (2) near middle of first sentence before "practical" inserted "legally obtained"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (1) at beginning of third sentence and in (2) at beginning of third sentence before "examination" deleted "written"; at end of (2)(c) deleted "in residential construction consisting of less than five living units in a single structure"; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 24.141.405 Fee schedule.
ARM 24.141.501 Electrician applications.

37-68-311. Application fee — license fee.

Compiler's Comments

2015 Amendment: Chapter 14 deleted former (2) that read: "(2) A person serving in an approved journeyman apprenticeship program or a residential apprenticeship program under the supervision of a licensed electrician is exempt from the licensing provision of this section during training"; and made minor changes in style. Amendment effective July 1, 2015.

2009 Amendment: Chapter 257 in (2) substituted "serving in an approved journeyman apprenticeship program or a residential apprenticeship program" for "serving a 4-year electrician apprenticeship" and deleted former second sentence that read: "Credit for the time spent in an electrical school must be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement"; in (3) near beginning after "may" deleted "on a case-by-case basis at the board's discretion and", after "board" substituted "issue a second temporary practice permit" for "renew a temporary practice permit", after "examination" deleted "for which the person is eligible but", after "permit" substituted "fee with a request for a second temporary practice permit" for "renewal application", and at end after "examination" substituted "within 3 months of failing the first examination" for "on the next available date"; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 196 in (1) in second sentence near middle substituted "application fee" for "examination fee" and near end of fourth sentence after "examination" deleted "the applicant shall pay to the department a license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 203 inserted (3) regarding renewal of temporary practice permit. Amendment effective October 1, 1999.

1993 Amendment: Chapter 31 in (1), at beginning of first sentence after "Master electricians", deleted "who are not electrical contractors" and in fourth sentence deleted reference to annual license fee; and made minor changes in style.

Statement of Intent: The statement of intent attached to SB 390 (Ch. 546, L. 1979) provided in part: "Sections 13 and 14 give the board authority to prescribe various fees. This must be done by rule. It is intended that each fee not exceed the amount necessary to meet the cost of administering the program to which it relates."

Administrative Rules

ARM 24.141.405 Fee schedule.
ARM 24.141.509 Nonroutine applications.

37-68-312. Electrical contractor's license — application — fees.

Compiler's Comments

2005 Amendment: Chapter 467 after "application" substituted "together with the appropriate fees" for "in writing" and at end after "state" deleted "for renewal of the license. A license may not be issued or renewed until the applicant meets the licensure requirements and has paid to the department a license fee set by the board for each firm operated by the electrical contractor. Licenses must bear the date of issuance or renewal. A license must be renewed for a 3-year period upon payment to the department of the license fee on or before the renewal date and upon meeting the requirements set by board rule." Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in first sentence, after "shall", substituted "on or before the date set by department rule" for "before July 1 of the year in which the prior license expired" and after "state" substituted "for renewal of the license" for "to obtain a license"; in second sentence, after "issued", inserted "or renewed" and before "requirements" inserted "licensure"; in third sentence, after "date", substituted "of issuance or renewal" for "of issue"; deleted former fourth sentence that read: "Each original license expires on the July 1 that is subsequent to the date of issuance, as determined by the board"; and at beginning of fourth sentence substituted "A license must be" for "An electrical contractor licensed under this chapter is entitled to have a license" and after "fee" substituted "on or before the renewal date and upon meeting the requirement set by board rule" for "before the date of expiration of the license and by meeting the requirements set by the board".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 31 in first sentence substituted "the year in which the prior license expired" for "each year", at beginning of fourth sentence inserted reference to each original license and after "July 1" substituted "that is subsequent to the date of issuance, as determined by the board" for "following the date of issue", and in fifth sentence, near middle, substituted "3-year period" for "year" and at end, after "license", inserted "and by meeting the requirements set by the board"; and made minor changes in style.

Statement of Intent: The statement of intent attached to SB 390 (Ch. 546, L. 1979) provided in part: "Sections 13 and 14 give the board authority to prescribe various fees. This must be done by rule. It is intended that each fee not exceed the amount necessary to meet the cost of administering the program to which it relates."

Administrative Rules

ARM 24.141.405 Fee schedule.
ARM 24.141.505 Electrical contractor licensing.
Title 24, chapter 141, subchapter 21, ARM Renewals and continuing education.

37-68-313. Reasonable fees — deposit of fees and fines collected.

Compiler's Comments

1999 Amendment: Chapter 402 inserted (2) regarding deposit of fines; and made minor changes in style. Amendment effective July 1, 1999.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 24.141.405 Fee schedule.

37-68-315. Presentation of license.

Compiler's Comments

2009 Amendment: Chapter 257 in (1) in first sentence at end substituted "present the person's license" for "provide proof of licensure", and in second sentence substituted reference to license for reference to proof of licensure; in (2) after "license" deleted "or proof of licensure", and at end substituted "department employee" for "department inspector"; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 402 inserted (2) authorizing department to issue citation and collect fine; and made minor changes in style. Amendment effective July 1, 1999.

37-68-316. Citation and fine for failure to display license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 366, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 90 in (2)(a) after "offense" inserted "unless the provisions of subsection (4)(b) apply"; in (4)(b) inserted first sentence prohibiting fining a licensee who produces proof of licensure; and made minor changes in style. Amendment effective July 1, 2015.

Effective Date: Section 11, Ch. 402, L. 1999, provided that this section is effective July 1, 1999.

CHAPTER 69
PLUMBERS

Chapter Administrative Rules

Title 24, chapter 180, ARM Board of Plumbers.

Chapter Case Notes

Dual Regulation Constitutional: Prior to enactment of subsection (3) of 50-60-506, concurrent regulation of plumbers by the state under 50-60-505 and by certain municipalities under 50-60-301 did not deny the plumbers due process or the equal protection of the law. The state regulatory system was a valid exercise of police power over a lawful business. Billings Assoc. Plumbing, Heating & Cooling Contractors v. Bd. of Plumbers, 184 M 249, 602 P2d 597, 36 St. Rep. 1996 (1979).

Part 1
General

37-69-101. Definitions.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (7)(a), at beginning inserted "Except as provided in subsection (7)(b)", and near middle after "premises" inserted "up to 20 feet beyond the building foundation line"; and inserted (7)(b) stating which services plumbing system does not include.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); and changed internal references to the department and the board.

Administrative Rules

ARM 24.180.301 Definitions.

Attorney General's Opinions

Interpretation of Plumber Licensing Statutes by Board of Plumbers — Licensing Authority Restricted by Statute — Intention of Legislature — Penalty Statute Inapplicable: The Board of Plumbers has the legal authority to interpret this chapter, and the interpretation by the Board must be given deference unless it is incorrect. In interpreting the plumbing licensing statutes, the intent of the Legislature must be determined, and if that intent can be understood from a plain reading of the statutes, there is no need to look further. The statutes as well as the statutory history clearly indicated that a plumber's license is required only for a person who is: (1) working in the field of plumbing in an incorporated city or town; (2) working in the field of plumbing in an area served by a public water supply or sewer system; or (3) working in the field of plumbing and connects or disconnects plumbing to or from a public water supply or sewer system, unless an exemption is granted. There is no penalty applicable to an unlicensed person for whom a license is not required by statute. 47 A.G. Op. 21 (1998).

License Requirements for Factory Workers Installing Plumbing in Modular Homes: The licensing requirement for plumbing is codified in 37-69-301. The definition of "field of plumbing" in 37-69-101 covers the work done at the factory. If the modular home in question is to be finally located "in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state", another licensing requirement factor is met. The third factor leading to the requirement of a plumbing license is work as either a master plumber or as a journeyman plumber, as defined in 37-69-101, which is interpreted as doing the tasks one would be authorized to perform if he were licensed. Therefore, Montana factory workers who install, at the factory, plumbing in modular homes which are to be located "in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state" must be licensed as plumbers under Title 37, ch. 69. 38 A.G. Op. 60 (1980). See also 47 A.G. Op. 21 (1998).

37-69-102. Permanent and temporary exceptions.

Compiler's Comments

2015 Amendment: Chapter 14 inserted (1)(i) regarding apprentices; inserted (1)(j) regarding students enrolled in certain plumbing training programs; and made minor changes in style. Amendment effective July 1, 2015.

1999 Amendment: Chapter 361 in (1)(a) near middle after "mobile home dealer" substituted "or a manufactured housing dealer connects a mobile home or a manufactured house" for "makes such installation" and after "existing" inserted "sanitary and potable water supply"; in (1)(c) inserted second sentence defining farm or ranch; in (1)(d) after "extending" inserted "repairing, or replacing"; inserted (1)(h) exempting installation of the pump, waterline, or pressure tank in the case of a private water supply; inserted (3) allowing an unlicensed person to perform temporary plumbing work under certain conditions; inserted (4) requiring withdrawal of the temporary authorization when a licensed person is reasonably available; and made minor changes in style. Amendment effective October 1, 1999.

1985 Amendment: In (1)(c) substituted "in a farm or ranch not connected to public water supply" for "in farms or ranches having their own private water supply"; in (1)(d) substituted "in cities, towns, water districts, and water user associations" for "in cities and towns", and after "own" deleted "city"; inserted (1)(g) referring to water meter installation; and in (2) near end after "farms," substituted "or ranches not connected to public water supply" for "having their own individual water supply".

Administrative Rules

ARM 24.180.508 Temporary exceptions.
ARM 24.180.607 Temporary practice permits.

Attorney General's Opinions

Interpretation of Plumber Licensing Statutes by Board of Plumbers — Licensing Authority Restricted by Statute — Intention of Legislature — Penalty Statute Inapplicable: The Board of Plumbers has the legal authority to interpret this chapter, and the interpretation by the Board must be given deference unless it is incorrect. In interpreting the plumbing licensing statutes, the intent of the Legislature must be determined, and if that intent can be understood from a plain reading of the statutes, there is no need to look further. The statutes as well as the statutory history clearly indicated that a plumber's license is required only for a person who is: (1) working in the field of plumbing in an incorporated city or town; (2) working in the field of plumbing in an area served by a public water supply or sewer system; or (3) working in the field of plumbing and connects or disconnects plumbing to or from a public water supply or sewer system, unless an exemption is granted. There is no penalty applicable to an unlicensed person for whom a license is not required by statute. 47 A.G. Op. 21 (1998).

37-69-103. No penalty for hiring unlicensed plumber.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 2
Board of Plumbers

Part Administrative Rules

Title 24, chapter 180, subchapter 1, ARM Organizational rules.

Title 24, chapter 180, subchapter 2, ARM Procedural rules.

37-69-201. Presiding officer.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former (2) that read: "(2) A majority of the board constitutes a quorum"; and made minor changes in style. Amendment effective October 1, 2001.

37-69-202. Rulemaking power — records.

Administrative Rules

Title 24, chapter 180, ARM Board of Plumbers.

Attorney General's Opinions

Interpretation of Plumber Licensing Statutes by Board of Plumbers — Licensing Authority Restricted by Statute — Intention of Legislature — Penalty Statute Inapplicable: The Board of Plumbers has the legal authority to interpret this chapter, and the interpretation by the Board must be given deference unless it is incorrect. In interpreting the plumbing licensing statutes, the intent of the Legislature must be determined, and if that intent can be understood from a plain reading of the statutes, there is no need to look further. The statutes as well as the statutory history clearly indicated that a plumber's license is required only for a person who is: (1) working in the field of plumbing in an incorporated city or town; (2) working in the field of plumbing in an area served by a public water supply or sewer system; or (3) working in the field of plumbing and connects or disconnects plumbing to or from a public water supply or sewer system, unless an exemption is granted. There is no penalty applicable to an unlicensed person for whom a license is not required by statute. 47 A.G. Op. 21 (1998).

37-69-203. Compensation of board members — expenses.

Compiler's Comments

1981 Amendment: Substituted section (see 1981 Session Law) for former text that read: "A member of the board is entitled to compensation of $20 for each day while actually engaged in the work of the board and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3
Licensing

Part Administrative Rules

Title 24, chapter 180, subchapter 5, ARM Licensing and scope of practice.

Title 24, chapter 180, subchapter 6, ARM Licensing and Board specific rules.

Part Attorney General's Opinions

Interpretation of Plumber Licensing Statutes by Board of Plumbers — Licensing Authority Restricted by Statute — Intention of Legislature — Penalty Statute Inapplicable: The Board of Plumbers has the legal authority to interpret this chapter, and the interpretation by the Board must be given deference unless it is incorrect. In interpreting the plumbing licensing statutes, the intent of the Legislature must be determined, and if that intent can be understood from a plain reading of the statutes, there is no need to look further. The statutes as well as the statutory history clearly indicated that a plumber's license is required only for a person who is: (1) working in the field of plumbing in an incorporated city or town; (2) working in the field of plumbing in an area served by a public water supply or sewer system; or (3) working in the field of plumbing and connects or disconnects plumbing to or from a public water supply or sewer system, unless an exemption is granted. There is no penalty applicable to an unlicensed person for whom a license is not required by statute. 47 A.G. Op. 21 (1998).

Malmstrom Air Force Base — Enforcement: By the authority granted the state by 2-1-202, the plumbers licensing law may be enforced on Malmstrom Air Force Base as to nonfederal entities so long as application of state law does not interfere with the U.S. government's use of the property for military purposes. 38 A.G. Op. 64 (1980).

37-69-301. License required.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 361 in (1) at beginning inserted exception clause, after "plumbing in" deleted "any incorporated city, town, or in any other area served by a public water supply or a public sewer system in", after "journeyman plumber" deleted "or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system", after "first" substituted "obtain a license" for "secure a state license", and after "provided" inserted "in Title 37, chapter 69, part 3" and deleted former second sentence that read: "The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice by certified letter to the board of plumbers and upon their approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available or until the board of plumbers withdraws its authorization"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 402 inserted (2) regarding license and proof of insurance; and made minor changes in style. Amendment effective July 1, 1999.

1985 Amendment: In second sentence, near middle after "reasonable notice", inserted "by certified letter", after "upon their approval", inserted "or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter", and near end after "reasonably available", inserted "or until the board of plumbers withdraws its authorization".

Attorney General's Opinions

Interpretation of Plumber Licensing Statutes by Board of Plumbers — Licensing Authority Restricted by Statute — Intention of Legislature — Penalty Statute Inapplicable: The Board of Plumbers has the legal authority to interpret this chapter, and the interpretation by the Board must be given deference unless it is incorrect. In interpreting the plumbing licensing statutes, the intent of the Legislature must be determined, and if that intent can be understood from a plain reading of the statutes, there is no need to look further. The statutes as well as the statutory history clearly indicated that a plumber's license is required only for a person who is: (1) working in the field of plumbing in an incorporated city or town; (2) working in the field of plumbing in an area served by a public water supply or sewer system; or (3) working in the field of plumbing and connects or disconnects plumbing to or from a public water supply or sewer system, unless an exemption is granted. There is no penalty applicable to an unlicensed person for whom a license is not required by statute. 47 A.G. Op. 21 (1998).

Public Utility Contractor Not to Install Certain Service Lines in Billings Unless Licensed by State as Plumber — City Required to Check License Qualifications:

In clarifying 44 A.G. Op. 12, the Attorney General noted that work done on a public water supply or public sewer system that does not include work falling within the statutory distances for plumbing or drainage systems does not require a state-issued plumber's license. Therefore, the city of Billings may not allow public utility contractors to install water service lines that extend from the public water main to a point within the walls of the private property or within 20 feet from any foundation wall of the premises, whichever distance is shorter as measured from the foundation wall, or wastewater service lines that extend from the public sewer main to a point within 2 feet from any foundation wall of the premises, unless the contractor also has a plumber's license issued by the state. 44 A.G. Op. 39 (1992).

The city of Billings may not allow public utility contractors to install water and wastewater service lines that extend from the public water or sewer main to a point within the walls of the private property or within 20 feet from any foundation wall of the private residence unless the contractor also has a plumber's license issued by the state. The city is required to determine whether a person applying for a plumbing permit pursuant to the Uniform Plumbing Code is licensed by the state as a plumber if the type of work described in the permit requires licensure as a requisite to performance. 44 A.G. Op. 12 (1991).

License Requirements for Factory Workers Installing Plumbing in Modular Homes: The licensing requirement for plumbing is codified in 37-69-301. The definition of "field of plumbing" in 37-69-101 covers the work done at the factory. If the modular home in question is to be finally located "in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state", another licensing requirement factor is met. The third factor leading to the requirement of a plumbing license is work as either a master plumber or as a journeyman plumber, as defined in 37-69-101, which is interpreted as doing the tasks one would be authorized to perform if he were licensed. Therefore, Montana factory workers who install, at the factory, plumbing in modular homes which are to be located "in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state" must be licensed as plumbers under Title 37, ch. 69. 38 A.G. Op. 60 (1980). See also 47 A.G. Op. 21 (1998).

37-69-303. Application — contents — requirements.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 24.180.404 Applications.
ARM 24.180.603 Reciprocity.
ARM 24.180.604 Out-of-state applicants.

37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority.

Compiler's Comments

2021 Amendment: Chapter 67 in (1)(a) at end of first sentence after "plumbing" deleted "with an attestation of skill by a supervising master plumber"; in (1)(a)(i) after "records" deleted "and the attestation of a supervising master plumber"; in (2) deleted last sentence that read: "The board shall define the periods and the levels for which the master plumber shall attest the journeyman plumber's skills, as provided in subsection (1)"; and made minor changes in style. Amendment effective July 1, 2021.

2019 Amendment: Chapter 420 in (1)(a) at end of first sentence inserted "with an attestation of skill by a supervising master plumber"; in (1)(a)(i) at end inserted "and the attestation of a supervising master plumber"; in (2) inserted last two sentences regarding requirement that the licensed master plumber observe the journeyman plumber's work at different times over the course of employment as specified by the board; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 90 in (1)(b) substituted "a written examination" for "an examination" and substituted "if required by the board, a practical demonstration establishing competence" for "establishing by practical demonstration competence"; and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendment: Chapter 467 in (1)(a) in first sentence after "5" substituted "years of legally obtained" for "years'" and after "plumbing" deleted "of a character satisfactory to the board" and near middle of second sentence after "the department" deleted "of labor and industry"; in (1)(b) near beginning after "examination" inserted "prescribed by the board"; deleted former (3) and (4) that read: "(3) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs.

(4) The department may use a third party to provide examination and grading services"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 inserted (3) concerning adoption of rules establishing fees; inserted (4) concerning third-party examination and grading services; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: In (1)(a), in two places, increased from 4 to 5 the number of years of experience required of applicants for a journeyman plumber's license and in second sentence, after "plumbing business", inserted "verified by time or pay records"; and made minor change in style.

Part of Section Not Codified: Section 66-2402(1), R.C.M. 1947, requiring persons desiring to work in the field of plumbing to file an application with the Department, has not been codified in the MCA, as the Code Commissioner determined it to be redundant with 37-69-303. However, the section has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 203, L. 1949, as amended by sec. 1, Ch. 186, L. 1965, as amended by sec. 228, Ch. 350, L. 1974, as amended by sec. 3, Ch. 497, L. 1975, as amended by sec. 22, Ch. 101, L. 1977.

Administrative Rules

ARM 24.180.401 Fee schedule.
ARM 24.180.404 Applications.
ARM 24.180.407 Examinations.

ARM 24.180.501 Journeyman plumbers' responsibilities.
ARM 24.180.504 Qualifications — journeyman.
ARM 24.180.505 Journeyman must work in employ of master.
ARM 24.180.607 Temporary practice permits.

37-69-305. Qualifications of applicants for master plumber's license — restriction on authority.

Compiler's Comments

2021 Amendment: Chapter 67 in (1)(b)(i) after "plumber" deleted "who has personally observed the applicant over a period specified by the board by rule and during application of plumbing skill levels, as determined by the board by rule". Amendment effective July 1, 2021.

2019 Amendment: Chapter 420 in (1)(b) inserted "which may run concurrently with the requirement in subsection (1)(a)"; in (1)(b)(i) inserted "who has personally observed the applicant over a period specified by the board by rule and during application of plumbing skill levels, as determined by the board by rule"; in (1)(b)(ii) after "plumbing" deleted "which may run concurrently with the requirement in subsection (1)(a)"; and made minor changes in style. Amendment effective October 1, 2019.

2005 Amendment: Chapter 467 in (1)(c) near beginning after "examination" inserted "prescribed by the board"; deleted former (4) and (5) that read: "(4) The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(5) The department may use a third party to provide examination and grading services"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 inserted (4) concerning adoption of rules establishing fees; inserted (5) concerning third-party examination and grading services; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: In (1)(a), before "journeyman plumber", inserted "licensed" and at end substituted "verified by time or pay records of actual plumbing experience" for "of a character satisfactory to the board"; in (1)(b), after "experience", substituted "working with a licensed master plumber or in a supervisory capacity" for "in supervisory capacities"; inserted (2) defining a year's experience; and made minor changes in phraseology.

Administrative Rules

ARM 24.180.401 Fee schedule.
ARM 24.180.404 Applications.
ARM 24.180.407 Examinations.
ARM 24.180.506 Qualifications — master.
ARM 24.180.507 Master plumbers — registration of business name.

37-69-306. Examination — issuance of license.

Compiler's Comments

2005 Amendment: Chapter 467 in (4) at end after "eligible" deleted "but who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Chapter 203 inserted (4) regarding renewal of temporary practice permit. Amendment effective October 1, 1999.

Administrative Rules

ARM 24.180.407 Examinations.
ARM 24.180.507 Master plumbers — registration of business name.

37-69-308. Deposit of fees and fines.

Compiler's Comments

1999 Amendment: Chapter 402 inserted (2) regarding deposit of fines; and made minor changes in style. Amendment effective July 1, 1999.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-69-310. Citation and fine for failure to display license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 366, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 90 in (2)(a) after "offense" inserted "unless the provisions of subsection (4)(b) apply"; in (4)(b) inserted first sentence prohibiting fining a licensee who produces proof of licensure; and made minor changes in style. Amendment effective July 1, 2015.

2001 Amendment: Chapter 483 in (1) near end after "department" deleted "of commerce". Amendment effective July 1, 2001.

Effective Date: Section 11, Ch. 402, L. 1999, provided that this section is effective July 1, 1999.

37-69-311. License of retirement status.

Compiler's Comments

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

Effective Date: This section is effective October 1, 2007.

Administrative Rules

ARM 24.180.608 Reissuance of license on active status following retirement.

37-69-319. Proof of license — citation and fine.

Compiler's Comments

1999 Amendment: Chapter 402 inserted (2) authorizing department to issue citation and collect fine; and made minor changes in style. Amendment effective July 1, 1999.

37-69-320. License and endorsement discipline.

Compiler's Comments

1995 Amendment: Chapter 221 in (1) and (2), after "licensee", inserted "or endorsee"; in (1)(c), after "license", inserted "or endorsement"; in (1)(e), after "licensee's", inserted "or endorsee's"; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 5, Ch. 221, L. 1995, a coordination section, voided the repeal.

Uniform Plumbing Code: The Uniform Plumbing Code is published by International Association of Plumbing and Mechanical Officials, 5032 Alhambra, Los Angeles, California 90032.

37-69-323. Restrictions on and responsibility for employees of master plumber.

Compiler's Comments

2021 Amendment: Chapter 67 in last sentence after "provides" substituted "false information to the department related to the experience or skill of a journeyman plumber or apprentice" for "an assurance but has not personally observed a portion of the plumbing work performed by the employed journeyman plumber or apprentice"; and deleted former last sentence that read: "The board shall provide by rule what portion of the plumbing work must be personally observed by the licensed master plumber." Amendment effective July 1, 2021.

2019 Amendment: Chapter 420 in second sentence after "work performed by" substituted "the journeyman plumber or apprentice employed by the licensed master plumber" for "such employees" and inserted third and fourth sentences concerning potential charges and rulemaking. Amendment effective October 1, 2019.

Administrative Rules

ARM 24.180.501 Journeyman plumbers' responsibilities.
ARM 24.180.504 Qualifications — journeyman.
ARM 24.180.506 Qualifications — master.
ARM 24.180.604 Out-of-state applicants.
ARM 24.180.607 Temporary practice permits.

Part 4
Medical Gas Piping

37-69-401. Medical gas piping installation endorsement.

Compiler's Comments

2005 Amendment: Chapter 467 in (4) deleted former second sentence that read: "Fees must be established by rule and must be commensurate with the costs of administering the medical gas piping installation endorsement program." Amendment effective July 1, 2005.

Administrative Rules

Title 24, chapter 180, subchapter 7, ARM Medical gas endorsement.

37-69-402. Requirements for installation of medical gas piping.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 366, L. 2023. Amendment effective October 1, 2023.

37-69-403. Proof of endorsement.

Compiler's Comments

Effective Date: Section 4, Ch. 486, L. 1999, provided that this section is effective on passage and approval. Approved April 27, 1999.

CHAPTER 72
CONSTRUCTION BLASTING

Chapter Compiler's Comments

Applicability: Section 13, Ch. 402, L. 1985, provided: "Any person licensed as a construction blaster by any state or any agency of the United States on October 1, 1985, who presents his license to the Division before January 1, 1986, must be issued a license to act as a construction blaster but is subject to the provisions of sections 1 and 7 through 12 [37-72-101, 37-72-102, now repealed, 37-72-201 through 37-72-203, 37-72-306, now repealed, and 37-72-307]."

Chapter Administrative Rules

ARM 17.24.1260 through 17.24.1263 Strip and Underground Mine Reclamation Act — blasters.

Title 24, chapter 131, subchapter 5, ARM License requirements for construction blasters.

Part 1
General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 366, L. 2023. Amendment effective October 1, 2023.

2005 Amendment: Chapter 542 in definition of explosive at end substituted reference to 61-9-102 for reference to 61-1-506. Amendment effective January 1, 2006.

2001 Amendment: Chapter 483 in definition of department after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 514 in (2)(c) substituted "commerce" for "labor and industry"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendments: Chapter 83 in (2)(d) changed "50-38-101" to "61-1-506"; and deleted (2)(e) that read: "(e) "magazine" has the meaning given in 50-38-101".

Chapter 613 in (1) changed "workers' compensation division" to "department"; inserted definition of Department; and deleted definition of Division. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

1987 Amendment: At end of (4) changed "82-4-231(3)(e)" to "82-4-231(10)(e)".

References to Repealed Section: The cite to 50-38-101 in (2)(d) and (2)(e) was bracketed by the Code Commissioner because 50-38-101 was repealed by Ch. 187, L. 1985. Chapter 187, L. 1985, gave the State Fire Marshal (now state fire prevention and investigation program of the Department of Justice) the authority to adopt rules relating to explosives in 50-3-102(3). For a definition of "explosives" amended to conform to the repeal and subsequent grant of rulemaking authority, see 45-8-332.

Administrative Rules

ARM 24.131.402 Construction blaster fees.

Part 2
Regulation by Department of Labor and Industry

37-72-201. Rules for use of explosives — variances.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Statement of Intent: The statement of intent attached to Ch. 402, L. 1985, provided: "A statement of intent is required for this bill because it requires the adoption of rules by the workers' compensation division of the department of labor and industry.

The legislature intends that the division adopt only those rules required by sections 9 [37-72-201] and 10 [37-72-202] of this bill.

The rules adopted by the division to implement section 3 [37-72-302] should require the submission of all training information on an affidavit on which the applicant must either list the name, place, and dates of attendance of a training school approved by the division and published in its list of approved schools or give sufficient information to allow the division to judge the content and quality of the program.

Because of the highly dangerous nature of the business regulated by this legislation, the legislature intends that all persons, except those already holding licenses and qualifying under the provisions of section 13 [not codified], must comply with section 2(2)(a) through (2)(d) [37-72-301(2)(a) through (2)(d)], whether applying for an initial license by examination, reexamination under section 4(3) [37-72-303(3), now repealed], or licensure by other jurisdictions under section 6 [37-72-305]. Fees for reexamination within 2 years of the initial examination should be less than fees for the initial examination because no training and experience information need be reviewed and verified.

In developing rules on the use of explosives under sections 9 [37-72-201] and 10 [37-72-202], it is intended that the division pay particular attention to the publication entitled "Suggested Code of Regulations", published by the institute of makers of explosives (IME), in addition to any industry recommendations or publications by other states, and that the division accept in satisfaction of the provisions of section 3 [37-72-302] successful completion of training programs conducted by IME and explosives manufacturers such as Du Pont and Atlas and other companies that have developed comprehensive training programs for the handling and use of explosives.

Rules adopted under section 10(5) [37-72-202(5)] are intended to be only such procedural rules as the division needs to receive applications, act on variance requests, conduct revocation hearings, and so forth."

Administrative Rules

ARM 24.131.402 Fees.

ARM 24.131.405 Training programs.

ARM 24.131.406 Use of explosives — incorporation of standards of national organizations and federal agencies.

ARM 24.131.410 Variances.

ARM 24.131.501 Construction blaster license requirements.

37-72-202. General rulemaking power.

Compiler's Comments

2005 Amendment: Chapter 467 in (2) after "37-72-301" substituted "37-72-304, and 37-72-305" for "and 37-72-303 through 37-72-306"; and made minor changes in style. Amendment effective July 1, 2005.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Statement of Intent: Chapter 402, L. 1985 (SB 194), which required the Division to adopt rules governing the activity of construction blasting, contained a statement of intent. For the text see compiler's comments at 37-72-201.

Administrative Rules

Title 24, chapter 131, subchapter 5, ARM Licensing.

37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Part 3
Licensing

37-72-301. General qualifications.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Administrative Rules

ARM 24.131.501 Construction blaster license requirements.

37-72-302. Training and experience requirements.

Compiler's Comments

1997 Amendment: Chapter 100 in (1)(b) substituted "2 years of experience" for "1 year of posttraining experience"; and made minor changes in style.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Administrative Rules

ARM 24.131.405 Training programs.
ARM 24.131.501 Construction blaster license requirements.

37-72-304. Issuance of license.

Compiler's Comments

2003 Amendment: Chapter 196 at beginning of first sentence deleted "Upon receipt of a license fee"; and deleted former third sentence that read: "It must be signed by the department." Amendment effective October 1, 2003.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Administrative Rules

ARM 24.131.501 Construction blaster license requirements.

37-72-305. Licensure of persons licensed by other jurisdictions.

Compiler's Comments

2005 Amendment: Chapter 467 at end after "37-72-301" substituted "and 37-72-302" for "through 37-72-303". Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 at beginning after "receipt of" substituted "an application and application fee" for "a license fee"; and made minor changes in style. Amendment effective October 1, 2003.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Administrative Rules

ARM 24.131.501 Construction blaster license requirements.

37-72-307. License — form — pocket card.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

CHAPTER 73
ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS

Chapter Compiler's Comments

Effective Date: Section 26(1), Ch. 303, L. 2005, provided that this chapter is effective October 1, 2005.

Part 1
General Provisions

37-73-102. Rulemaking.

Administrative Rules

Title 24, chapter 142, ARM Elevator licensing program.

Part 2
Licensing

37-73-201. License required.

Administrative Rules

Title 24, chapter 142, subchapter 5, ARM Licensing.

37-73-203. Elevator mechanic's license — limited mechanic's license.

Administrative Rules

ARM 24.142.502 Elevator mechanic and limited mechanic licensure qualifications.
ARM 24.142.503 Elevator mechanic and limited mechanic applications.

37-73-204. Elevator mechanic's examination — fee — reciprocity.

Administrative Rules

ARM 24.142.402 Fee schedule.
ARM 24.142.509 Examinations.
ARM 24.142.510 Licensure by reciprocity or endorsement.

37-73-208. Elevator inspector's license — temporary license.

Compiler's Comments

2007 Amendment: Chapter 502 inserted (3) establishing when an elevator inspector who is not properly certified may conduct inspections. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

Administrative Rules

ARM 24.142.504 Temporary practice permit.

37-73-216. Temporary elevator mechanic's license.

Compiler's Comments

2007 Amendment: Chapter 44 in (1)(b) deleted former second sentence that read: "The department may not charge a fee for a license issued under this section." Amendment effective October 1, 2007.

Administrative Rules

ARM 24.142.504 Temporary practice permit.

37-73-226. Failure to display license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 366, L. 2023. Amendment effective October 1, 2023.

TITLE 38

RESERVED

Name Change — Code Commissioner [illegible] in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", [illegible] made in this section.

Administrative Rules

ARM 24.131.501 Construction blaster license requirements.

37-72-307. License — form — pocket card.

Compiler's Comments

[illegible] in the provisions of the Montana Code Annotated, the terms [illegible] "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

CHAPTER 73
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Part 2
Licensing

37-73-201. License required.

Administrative Rules

Title 24, chapter 142, subchapter 5, ARM Licensing.

37-73-203. Elevator mechanic's license — limited mechanic's license.

Administrative Rules

ARM 24.142.502 Elevator mechanic and limited mechanic licensure qualifications.

ARM 24.142.503 Elevator mechanic and limited mechanic applications.

37-73-204. Elevator mechanic's examination — fee — reciprocity.

Administrative Rules

ARM 24.142.402 Fee schedule.

ARM 24.142.509 Examinations.

ARM 24.142.510 Licensure by reciprocity or endorsement.

37-73-208. Elevator inspector's license — temporary license.

Compiler's Comments

2007 Amendment: Chapter 502 inserted (3) establishing when an elevator inspector who is not properly certified may conduct inspections. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

Administrative Rules

ARM 24.142.504 Temporary practice permit.

TITLE 38
RESERVED